Supreme Court, U. S.
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IN THE

Supreme Court of the United States

OCTOBER TERM, 1974

No. ...74-1269

JOHN L. BARRY, Commissioner of the SUFFOLK COUNTY POLICE DEPARTMENT,

Petitioner,

against

THOMAS DWEN, as President of the Suffolk County Patrolmen's Benevolent Association and THOMAS DWEN, Individually,

Respondent.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

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IN THE

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OCTOBER TERM, 1974

No. .....

JOHN L. BARRY, Commissioner of the SUFFOLK COUNTY POLICE DEPARTMENT,

Petitioner,

against

THOMAS DWEN, as President of the Suffolk County Patrolmen's Benevolent Association and THOMAS DWEN, Individually,

Respondent.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

Petitioner prays that a writ of certiorari issue to review the judgment of the United States Court of Appeals for the Second Circuit entered in the above entitled case on January 9, 1975.

Citations to Opinions Below

The first opinion of the District Court for the Eastern District of New York is printed in Appendix B hereto, *infra*, p. 19a and is reported in 336 F. Supp. 487. The opinion of the Circuit Court of Appeals for the Second Circuit is printed in Appendix B hereto, *infra*, p. 9a and

is reported in 483 F. 2d 1126. The second opinion of the District Court is printed in Appendix B hereto, *infra*, p. 5a and is unreported. The judgment without opinion of the Circuit Court of Appeals is printed in Appendix B hereto, *infra*, p. 2a.

Jurisdiction

The judgment of the Circuit Court of Appeals was entered on January 9, 1975 (p. 2a, *infra*). The jurisdiction of this Court is invoked under 28 U.S.C., Section 1254 (1) and Rule 19 (1) (b) of the Supreme Court Rules.

Question Presented

Whether a police department may constitutionally regulate the length of hair of individual police officers based upon the legitimate state interest of either safety and/or the morale factor of maintaining uniformity of discipline in a quasi-military organization such as the Suffolk County Police Department.

Statute Involved

The statutory provision involved is the Constitution of the United States, Amendment XIV, Section 1, U.S.C.A. Const. Amend. XIV, Section 1. The section is printed in Appendix A, *infra*, p. 1a.

Statement

By service of an order to show cause dated August 4, 1971, together with a summons and complaint, an action was commenced in the United States District Court for the Eastern District of New York to enjoin John L. Barry,

Commissioner of the Suffolk County Police Department, from enforcing General Order No. 71-1 which involved grooming standards for police officers. More particularly, the rule involved certain guidelines as to the length of a police officer's hair as well as regulating the growth of mustaches, beards and sideburns. The action had been commenced in the Federal District Court on the basis that the plaintiff's rights of free expression, due process and equal protection as provided in the First and Fourteenth Amendments of the United States Constitution had been violated.

By memorandum of decision and order dated November 8, 1971, Chief Justice Mishler of the District Court denied a motion for a preliminary injunction enjoining the Commissioner of the Suffolk County Police Department from enforcing the regulation. The Court held that uniformity of dress is part of the discipline of the local police department and a visible sign of the presence of the law. The Court further held that regulations involving dress and grooming should be left up to officials who are aware of local customs and taboos and not to the Courts.

On November 30, 1971, by memorandum of decision and order, the Hon. Jacob Mishler dismissed the complaint based upon his decision and order dated November 8, 1971. Thereafter, on December 6, 1971, plaintiff filed a notice of appeal to the United States Circuit Court of Appeals for the Second Circuit from both memorandum decisions and orders of the Hon. Jacob Mishler.

On August 22, 1973, the United States Court of Appeals for the Second Circuit reversed the decisions and orders of the Hon. Jacob Mishler and remanded the case to the District Court for trial. The Second Circuit Court of Appeals held that the choice of personal appearance is an ingredient of an individual's personal liberty and any restriction on that right must be justified by a legitimate

state interest. The Court further held that there is a substantial constitutional question raised by the regulation of the plaintiff's hair length. Since the Court felt that there had not been a significant justification presented in the affidavit and supporting papers submitted in the District Court as to a legitimate state interest, the Second Circuit Court remanded the case for trial of the issues of fact, stating that the burden of proof was on the Commissioner at trial.

A plenary hearing was held before the Hon. Jacob Mishler on April 3, 1974 and as a result of that hearing, by memorandum of decision and order dated May 30, 1974, the Hon. Jacob Mishler granted judgment in favor of the plaintiffs declaring the hair regulation of the Suffolk County Police Department unconstitutional in that it violated the due process clause of the Fourteenth Amendment because the defendant Commissioner had failed to establish a legitimate state interest requiring hair length restrictions on members of the police department. A judgment was entered on June 19, 1974 permanently enjoining the Suffolk County Police Commissioner from enforcing the hair regulation and declaring the Rules of the Suffolk County Police Department with respect to same unconstitutional. On June 18, 1974 a notice of appeal was filed by the defendant Police Commissioner from said judgment to the United States Court of Appeals for the Second Circuit.

By order dated January 9, 1975, based upon the transcript of the record from the United States District Court for the Eastern District of New York, the United States Court of Appeals for the Second Circuit affirmed the judgment of the District Court without opinion.

Reasons for Granting the Writ

1. The decisions of the Second Circuit Court of Appeals are directly in conflict with the decision of the United States Court of Appeals for the Eighth Circuit in the case of *Stradley* v. *Anderson,* 478 Fed. Rep. 2d 188, which affirmed the decision of the Federal District Court in the same case at 349 F. Supp. 1120. In the *Stradley* case, a virtually identical hair grooming regulation had been promulgated by the City of Omaha Police Department. The District Court had stated in its decision upholding the regulation that:

> "The public should not have to guess who is and who is not a bona fide officer of the law. Uniformity of dress prevents such problems. Grooming standards, as part of uniform regulations, are a legitimate state interest. The desire of the police officer for individuality in the selection of his hair style and length is outweighed by the legitimate state interest in immediate public recognition of bona fide police officers." Appendix C, p. 34a.

On appeal to the United States Court of Appeals for the Eighth Circuit, Circuit Judge Lay stated that:

> "One may argue that how one wears his hair has little to do with whether an officer might effectively apprehend criminals or otherwise fulfill his assigned mission as a policeman. This misses the mark. The critical factor is that police officialdom deems it necessary that the officer be well disciplined and that as part of that internal discipline he be required to maintain a neat appearance. The degree of that appearance, as long as it is not arbitrary or ureasonable, should not be the Court's concern." Appendix C, p. 28a.

One of the petitioner's main arguments before the District Court for the Eastern District and before the Circuit

Court of Appeals for the Second Circuit was that uniform standards of grooming including the regulation of hair length was a legitimate state interest. Further, the District Court and the Circuit Court of Appeals were not unmindful of the decision in the Eighth Circuit, as the Circuit Court of Appeals cites *Stradley* v. *Anderson, supra,* in its decision remanding the case to the Federal District Court for the Eastern District. Appendix B, p. 12a.

The police officer has a unique occupation in that the mere presence of the uniformed police officer is a visible sign of law enforcement. The uniformity in dress and grooming is not uniformity for its own sake but for the safety of the public at large. The decision of the court below is believed to be erroneous and the conflicting decision of *Stradley* v. *Anderson, supra,* is believed to be correct.

2. The other argument advanced by the Police Commissioner in the courts below is that safety of the police officer is a legitimate state interest. Chief Justice Mishler heard testimony in the District Court to the effect that certain lengths of hair present a safety problem. Indeed, ". . . pony tails present a hazard to law enforcement officers and are a proper subject for regulation" (Appendix B, p. 7a). Since there was indisputable proof that at least a portion of the regulation dealt with safety *and* the Court found factually that it was a valid subject for regulation, the petitioner Police Commissioner had sustained the burden of proof imposed by the Circuit Court of Appeals, i.e., that there existed a genuine public need for the regulation. There was further uncontroverted testimony that hair length would interfere with a police officer operating a police vehicle during a pursuit chase. A police officer's safety is certainly within the ambit of "public need", and any regulation which relates to his safety served a legitimate state interest.

The Circuit Court of Appeals for the Second Circuit has recently held that with respect to fireman a similar hair regulation as to the one involved in the instant case was constitutionally permissible. In the case of *Kamerling, et al.* v. *O'Hagan,* U. S. Court of Appeals for the Second Circuit, Decided March 18, 1975, Docket No. 74-2155, the Court held that the health and safety of firemen was a legitimate state interest and therefore the Fire Commissioner had a right to promulgate rules regarding the length of the hair of the members of the Fire Department.

In summary, a twofold justification for the regulation of the length of hair of members of the Suffolk County Police Department was presented to the Circuit Court of Appeals. One was safety of the police officer and the other was that uniform standards of grooming are necessary for the general morale of the Police Department. The *Stradley* decision, *infra,* is in direct conflict with the Second Circuit's opinion and is the correct decision. Further, by not recognizing the fact that safety of a police officer is just as important, if not more so than fireman, the Circuit Court has clearly erred.

3. The decision of the court below is also believed to be erroneous in that it conflicts with decisions which have been rendered by the New York State Courts including the highest court of the State of New York concerning identical grooming regulations. The case of *Greenwald* v. *Frank,* 70 Misc. 2d 632, 334 N.Y.S. 2d 680, judgment affirmed as modified, 40 App. Div. 2d 717, 337 N.Y.S. 2d 225, affirmed 32 N.Y. 2d 862, 346 N.Y.S. 2d 529 (1973), involved a virtually identical hair grooming regulation promulgated by the Nassau County Police Department. An Article 78 proceeding was commenced in the Supreme Court of the State of New York, County of Nassau, to nullify the hair regulation of the Nassau County Police Department. In dismissing the proceeding Special Term held that a policeman does

not have the same constitutional right as, e.g., a teacher or a lawyer, to determine his own personal appearance while in uniform. "The private interest . . . of a policeman in uniform to determine his own personal appearance is clearly offset by the 'powerful countervailing interest' of the police department and the general public." (*Greenwald* v. *Frank, supra,* p. 668).

In affirming Special Term, the Appellate Division, Second Department stated that the regulation was modest in nature and was proper in that there should be neatness and discipline in a large quasi-military organization as a police department so that the general public would have respect for individual police officers. The Court of Appeals thereafter unanimously affirmed the decision of the Appellate Division.

We now have the peculiar situation that because of the decision rendered by the Circuit Court of Appeals for the Second Circuit in the instant case that the Suffolk County Police Department may not regulate the length of hair of its members because of a violation of their constitutional rights, while in the sister County of Nassau, the State's highest Court allows the police commissioner to regulate the length of hair of members of the Nassau County Police Department.

In light of the existence of the *Greenwald* v. *Frank* case, *supra,* the Federal District Court should have refrained from interfering with a matter which clearly was in the process of being resolved in the State courts. *Younger* v. *Harris,* 401 U. S. 37 (1971) has stood for the proposition that the Federal courts should refrain from intervention in State court criminal prosecutions. Recently the doctrine has been extended to include a Federal District Court from interfering in a State civil proceeding where a State statute had been declared unconstitutional by a Federal District Court (*Huffman* v. *Pursue, Ltd.,* —— U.S.

——, decided March 18, 1975, No. 73-296). The principles of comity eunciated in the *Younger* case, *supra,* and the extension of same by *Huffman, supra,* shonid have been reason enough for the District Court and the Circuit Court to refrain from interfering in an area which was obviously being resolved in State proceedings.

4. Lastly, the Circuit Court of Appeals, affirmance of the District Court was based upon an erroneous assumption on the part of the Circuit Court, to wit, that a police department is not a quasi-military organization. When the case was first argued before the Circuit court, the position of the individual plaintiff, Thomas Dwen, had been that the policeman's right to wear his hair the way he chooses was analogous to the *school* cases (see *Griffin* v, *Tatum,* 425 F. 2d 210 (5th Cir.); *Breen* v. *Kahl,* 419 F. 2d 1034 (7th Cir.); *Durham* v. *Pulsifer,* 312 F. Supp. 411; *Broxton* v. *Board of Public Instruction of Divol Co., Fla.,* 303 F. Supp. 958). The Suffolk County Police Department argued, however, the analogy was certainly closer to the military cases if one were looking for some precedent in the area of hair cases (see *Doyle* v. *Koelbe,* 434 F. 2d 1014 (5th Cir. 1970); *Gianatasio* v. *Whyte,* 426 F. 2d 908 (2d Cir.)).

The Second Circuit in the instant case clearly indicates that a police department is *not* quasi-military in nature. Yet, the same Patrolmen's Benevolent Association which is the respondent in this petition has admitted in other court proceedings in the State courts that the Suffolk County Police Department *is* quasi-military in character. By making a determination that the Suffolk County Police Department was not quasi-military in character, the Second Circuit was making an erroneous assumption which eventually guided the District Court into making an erroneous determination as to rules and regulations concerning hair lengths of police officers.

CONCLUSION

For the foregoing reasons, this petition for a writ of certiorari should be granted.

Dated: April 4, 1975.

Respectfully submitted,

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APPENDIX A

Statutes.

U.S.C.A. Const. Amend. XIV, Section 1.

All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

APPENDIX B

Judgment of United States Court of Appeals.

UNITED STATES COURT OF APPEALS

FOR THE

SECOND CIRCUIT

At a stated Term of the United States Court of Appeals for the Second Circuit, held at the United States Courthouse in the City of New York, on the ninth day of January one thousand nine hundred and seventy-five.

Present: HON. J. JOSEPH SMITH
HON. JAMES L. OAKES
HON. WILLIAM H. TIMBERS
Circuit Judges,

74—1900

THOMAS DWEN, as President of the Suffolk County Patrolmen's Benevolent Association and THOMAS DWEN, individually,

Plaintiff-Appellee,

v.

JOHN L. BARRY, Commissioner of the Suffolk County Police Department,

Defendant-Appellant.

Appeal from the United States District Court for the Eastern District of New York.

Appendix B.

This cause came on to be heard on the transcript of record from the United States District Court for the Eastern District of New York, and was argued by counsel.

ON CONSIDERATION WHEREOF, it is now hereby ordered, adjudged, and decreed that the judgment of said District Court be and it hereby is affirmed with costs to be taxed against the appellant.

A. DANIEL FUSARO,
Clerk

by: Vincent A. Carlin
Chief Deputy Clerk

Judgment of United States District Court.

UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF NEW YORK

Index No. 71-C-1020

Permanent Injunction

THOMAS DWEN, as President of the Suffolk County Patrolmen's Benevolent Association and THOMAS DWEN, individually,

Plaintiff,

against

JOHN L. BARRY, Commissioner of the Suffolk County Police Department,

Defendant.

This action having come on to be heard before the Court, the Honorable Jacob B. Mishler, District Judge, presiding,

Appendix B.

and the issues having been duly heard on the 3rd day of April, 1974, and the Honorable Jacob B. Mishler having rendered his decision in writing on the 30th day of May, 1974, setting forth Findings of Fact and Conclusions of Law, it is, therefore,

ORDERED, ADJUDGED AND DECREED, that Section 2/2.16 of the Rules and Procedures of the Suffolk County Police Department is unconstitutional and void, and it is further,

ORDERED, ADJUDGED AND DECREED, that the Suffolk County Police Commissioner, his agents, servants, employees and all persons acting in active concert with him are hereby permanently enjoined from enforcing Section 2/2.16 of the Rules and Procedures of the Suffolk County Police Department.

Dated and entered at Brooklyn, New York, this 11th day of June, 1974.

s/ JACOB MISHLER
U.S.D.J.

Appendix B.

Memorandum of Decision and Order of Justice Mishler.

UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF NEW YORK

71 C 1020

May 30, 1974

THOMAS DWEN, as President of the Suffolk County Patrolmen's Benevolent Association and THOMAS DWEN, individually,

Plaintiff,

against

JOHN L. BARRY, Commissioner of the Suffolk County Police Department,

Defendant.

In November, 1971, this court denied a preliminary injunction and dismissed a civil rights action brought by the plaintiff. The United States Court of Appeals for the Second Circuit, by order dated August 22, 1973, reversed this court's dismissal of the complaint and remanded the case for trial on the issue of whether the state had ". . . some legitimate state interest reasonably requiring the restriction on the individual." 483 F. 2d 1126, 1130 (2d Cir. 1973). The appellate court held that the defendant had ". . . the burden of establishing a genuine public need for the regulation." 483 F. 2d at 1131.

The regulations concerning grooming standards (originally numbered 2/75.0 to 2/75.5 of the rules and regulations

of the Police Department, County of Suffolk, New York, dated July 19, 1971, effective August 1, 1971) have been modified and renumbered.[1] The complaint was amended to challenge the grooming standards set forth in Rule 2/2.16 as modified and in effect since November 15, 1973.

Defendant suggested that the grooming regulations serve the dual purpose of safety and morale. Defendant's sole witness was Deputy Commissioner Robert C. Rapp. Commissioner Rapp has been the Deputy Police Commissioner since July 21, 1973 and prior to that served as both a patrolman and a sergeant on the New York City police force and as an assistant district attorney of Suffolk County.

Commissioner Rapp testified that long hair presents a safety problem to an officer attempting to make an arrest by placing that officer in a position of being thrown of balance by an offender. The Commissioner demonstrated that

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[1] The regulations concerning hair, sideburns and mustaches are now numbered 2/2.16 subdivisions A, B and C. The regulations concerning beards, goatees and wigs are now subdivisions D and E of 2/2.16. As modified the grooming standards effective November 15, 1973 read as follows:

2/2.16 Members of the Force will be neat and clean at all times while on duty. Male personnel will comply with the following grooming standards unless excluded by the Police Commissioner due to special assignments:

A. Hair will be neat, clean, trimmed and present a groomed appearance. Hair will not go below the ears or the collar except the closely cut hair on the back of the neck. Pony tails are prohibited. In no case will the bulk or length of the hair interfere with the proper wear of any authorized headgear.

B. If a member chooses to wear sideburns,they will be neatly trimmed. Sideburns will not extend below the lowest part of the ear. Sideburns shall not be flared beyond 2" in width and will end with a clean-shaven horizontal line. Sideburns shall not connect with the mustache.

C. A neatly trimmed mustache may be worn.

a downward force applied to the head through the grasp of "superfluous" hair and transmitted to the forearm in contact with the police officer's back could result in an embarrassing and potentially dangerous upending. The demonstration, favored by a bountiful head of hair supplied by the official court reporter on duty, served to illustrate that pony tails present a hazard to law enforcement officers and are a proper subject for regulation. The remainder of 2/2.16A, however, bears no relationship to safety but rather related to hair styling.[2] The potential danger in hairdress is the ability of the offender to grip the hair and hold the fate of the police officer in his hand. Bulk and length of the hair is not regulated except as it interferes with "the proper wear of any authorized headgear." Thus the regulation would permit bulky and lengthy hair on the top of the head, thereby presenting the very problem that was demonstrated. In the remaining subdivisions, sideburns, mustaches and wigs are regulated and beards are barred. No proof was offered to support any claim of the need for the protection of the police officer in the pertinent regulations.

The high morale of police personnel is a matter of grave concern to the department. Proper grooming is an ingredient of the esprit de corps of a good law enforcement organization. The self-esteem generated in the individual and the respect commanded from the public it serves promotes the efficiency of the organization's work. However, with the exception of the general requirement that hair, sideburns and mustaches be neatly trimmed, the regulations do not provide standards for proper grooming. Rather, the standards do nothing more than demand uniformity. Uni-

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[2] The purpose of Section 2/2.16A is stated in the first sentence:

"Hair will be neat, clean, trimmed, and present a groomed appearance." The remainder of the subdivision relates to specific standards of good grooming.

Appendix B.

formity for uniformity's sake does not establish a public need.[3] Defendant offered no proof that beards, goatees, hair styles that extend below the ears or collar, or sideburns that extend below the lowest part of the ear or beyond 2″ in width and do not end with a clean-shaven horizontal line affect the morale of the members of the police department or earn the disrespect of the public.

Defendant failed to establish a legitimate state interest requiring these restrictions on the members of the police department. Rule 2/2.16 including its subdivisions is an arbitrary limitation and a purposeless restraint. As such, it is violative of the Due Process Clause of the Fourteenth Amendment and therefore unconstitutional.[4]

Judgment is granted in favor of the plaintiff and against the defendant declaring Section 2/2.16 of the rules and procedures of the Suffolk County Police Department unconstitutional, void and of no effect and permanently enjoining the defendant from enforcing Section 2/2.16.

Settle judgment in accordance with this memorandum of opinion on two days service (five days by regular mail).

s/ JACOB MISHLER
U. S. D. J

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[3] Commissioner Rapp testified that uniformity was required for identification. It would appear, however, that the uniform (issued by the department) supplies the necessary identification for police work.

[4] Section 2/2.16 fixes grooming standards for male members only. The court does not reach the equal protection claim of the Fourteenth Amendment.

Appendix B.

Decision of United States Court of Appeals, dated August 22, 1973.

UNITED STATES COURT OF APPEALS

FOR THE SECOND CIRCUIT

No. 862—September Term, 1972.

(Argued June 14, 1973 Decided August 22, 1973.)

DOCKET No. 72—1037

THOMAS DWEN, as President of the Suffolk County Patrolmen's Benevolent Association and THOMAS DWEN, individually,

Plaintiff-Appellant,

v.

JOHN L. BARRY, Commissioner of the Suffolk County Police Department,

Defendant-Respondent.

Before: KAUFMAN, Chief Judge
SMITH, Circuit Judge, and
BRYAN,* District Judge.

Appeal from denial of preliminary injunction and summary dismissal of action by patrolman seeking to invalidate hair grooming standards adopted by Suffolk County Police Department, in the United States District Court

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* Of the United States District Court for the Southern District of New York, sitting by designation.

for the Eastern District of New York, Jacob Mishler, Chief Judge.

Reversed and remanded.

LEONARD WEXLER, Smithtown, N. Y. (Richard T. Haefeli, Smithtown, N. Y., of counsel), for Appellant.

PATRICK A. SWEENEY, Riverhead, N. Y. (George W. Percy, Suffolk County Attorney, Riverhead, N. Y., of counsel), for Appellee.

SMITH, Circuit Judge:

This is an appeal from denial of preliminary injunction and summary dismissal by the United States District Court for the Eastern District of New York, Jacob Mishler, Chief Judge, of a civil rights action brought by Dwen, individually and as president of the Suffolk County Patrolmen's Benevolent Association, seeking to invalidate hair grooming regulations of the Suffolk County Police Department[1] as in violation of the patrolmen's rights under

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[1] Order Number 71-1 Amending Rules and Procedures
POLICE DEPARTMENT, COUNTY OF SUFFOLK, N. Y.

X GENERAL
SPECIAL
PERSONNEL ORDER NUMBER 71-1 Date 19 July 1971
AUTHORITY Police Commissioner
SIGNATURE OF AUTHORITY JOHN L. BARRY

Effective 0001 hrs. 1 August, 1971 Chapter 2 of the Rules & Procedures is amended by the addition of the following section:

2/75.0 Members of the Force and Department shall be neat and clean at all times while on duty. Male personnel shall comply with the following grooming standards unless excluded by the Police Commissioner due to special assignment:

(*footnote continued on following page*)

the First and Fourteenth Amendments. We conclude that summary dismissal based on the pleadings and an affidavit submitted by Deputy Commissioner Eugene Kelley was improper. Accordingly, we reverse and remand for trial.

The court correctly recognized that the regulation might well raise constitutional issues of the right to free expres-

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(*footnote continued from preceding page*)

2/75.1 HAIR: Hair shall be neat, clean, trimmed, and present a groomed appearance. Hair will not touch the ears or the collar except the closely cut hair on the back of the neck. Hair in front will be groomed so that it does not fall below the band of properly worn headgear. In no case will the bulk or length of the hair interfere with the proper wear of any authorized headgear. The acceptability of a member's hair style will be based upon the criteria in this paragraph and not upon the style in which he chooses to wear his hair.

2/75.2 SIDEBURNS: If an individual chooses to wear sideburns, they will be neatly trimmed and tapered in the same manner as his haircut. Sideburns will not extend below the lowest part of the exterior ear opening, will be of even width (not flared), and will end with a clean-shaven horizontal line.

2/75.3 MUSTACHES: A short and neatly trimmed mustache may be worn, but shall not extend over the top of the upper lip or beyond the corners of the mouth.

2/75.4 BEARDS & GOATEES: The face will be clean-shaven other than the wear of the acceptable mustache or sideburns. Beards and goatees are prohibited, except that a Police Surgeon may grant a waiver for the wearing of a beard for medical reasons with the approval of the Police Commissioner. When a Surgeon prescribes that a member not shave, the beard will be kept trimmed symmetrically and all beard hairs will be kept trimmed so that they do not protrude more than one-half inch from the skin surface of the face.

2/75.5 WIGS: Wigs or hair pieces will not be worn on duty in uniform except for cosmetic reasons to cover natural baldness or physical disfiguration. If under these conditions, a wig or hair piece is worn, it will conform to department standards.

Appendix B.

sion, due process and equal protection if applied to other than uniformed personnel, but analogized the uniformed force to the military and sustained the regulations. A number of courts have upheld such regulations on similar grounds, terming police organization as para-military or quasi-military requiring strict discipline and uniformity of appearance, see, e.g., Greenwald v. Frank, 40 App. Div. 2d 717, 337 N.Y.S. 2d 225 (1972), aff'd without opinion, —— N.Y. —— (May 30, 1973). See also Stradley v. Anderson, 349 F. Supp. 1120 (D. Neb. 1972), aff'd —— F. 2d —— (8th Cir., May 17, 1973); Doyle v. Kammeraad, 310 Mich. 233, 17 N.W. 2d 165 (1943); Fraternal Order of Police v. Harris, 306 Mich. 68, 10 N.W. 2d 310 (1943); People ex rel. Masterson v. French, 110 N.Y. 494, 499 (1888).

Central to each of the "para-military" cases is the singular position afforded the military, Orloff v. Willoughby, 345 U.S. 83 (1953); see Hagopian v. Knowlton, 470 F. 2d 201, 204 (2d Cir. 1972), and the concept that those in the armed forces are deemed to surrender many important rights. "(T)he armed services, their officers, and their manner of discipline do serve an essential function in safeguarding the country. The need for discipline, with the attendant impairment of certain rights, is an important factor in fully discharging that duty." Raderman v. Kaine, 411 F. 2d 1104 (2d Cir.), cert. dismissed, 396 U.S. 976 (1969).

Extension to the uniformed civilian services or the police and fire departments of the unique judicial deference accorded to the military, however, seems to us not warranted. While these services have been characterized as para-military organizations,[2] see Doyle v. Kammeraad, supra;

[2] "The government of a police force assimilates to that required in the control of a military body. . . ." People ex rel. Masterson v. French, supra, 110 N.Y. 494, 500 (1888).

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Fraternal Order of Police v. Harris, supra; Greenwald v. Frank, supra; People ex rel. Masterson v. French, supra, the characterization is hardly justified either historically or functionally.

The civilian police force is a relatively recent development. It arose out of the need to supplement the private citizen's role in keeping the peace.[3] Any "para-militarism" of the force stems not from its origin nor from the nature of its duty but from the adoption of an organization with a centralized administration and a disciplined rank and file for efficient conduct of its affairs.[4] The use of such or-

[3] "The Anglo-Saxon police tradition . . . springs from a configuration of attitudes which were profoundly suspicious of central authority and hostile to the idea of guarding the local peace with militia." Tafe & England, Criminology, 317, 318 (4th ed. 1964); see also Hall, Legal and Social Aspects of Arrest Without Warrant, 49 Harv. L. Rev. 566, 579 (1936); Hall, Police and Law in a Democratic Society, 28 Ind. L. Rev. 133, 135-37 (1953).

[4] Clearly distinct from the continental tradition of a police system which was part of the military establishment under the control of the central state, the Anglo-Saxon police system in England, followed in the United States, developed from a system of local property owners responsible for keeping the peace in their own towns or villages. Statute of Winchester, 13 Edw. 1, § 2 (1285). See 49 Harv. L. Rev. 580-83; 28 Ind. L. Rev. at 135. Creation of a separate police force in London in 1829 was accomplished only after fear of an armed militia to be used against the liberty of citizens was overcome. See 49 Harv. L. Rev., supra, n. 3 at 587-90. W. Lee, A History of Police in England at 248. New York, the first to follow the English example, replaced its separately organized systems of night and day watchmen which were comprised generally of otherwise employed men, with a force of 800 men under a police chief. The force was un-uniformed, undisciplined and essentially political. Members were appointed for one year by local aldermen. The history of the force throughout the nineteenth century makes clear that there was no intention to create a civilian military. See R. Fosdick, American Police Systems at 109-10 (1920). The discipline as it exists today was a late development in the force.

ganization evolved as a practical administrative solution and out of any desire to create a military force.[5] See R. Fosdick, American Police System ch. 2 (1920); W. Lee, A History of Police in England (1901) (1971 ed.). The police force remains significantly different in character from the military. It is still locally controlled and organized, see N.Y. Unconsol. Laws § 5721, and subject to more direct control of the electorate, N.Y. Unconsol. Laws § 5722, Suffolk County Constitution art. XII § 1202 (a), (b) (4), (b) (5) and § 1211. Appointment of members of the force is made under Civil Service Regulation. While police officials are given broad discretion in running a department, dismissal of patrolmen is subject to court review. N.Y. Village Law § 8-806 (McKinney N.Y. Unconsol. Laws § 5732); see People ex rel. Hart v. Board of Fire Commissioners, 82 N.Y. 358, 360-61 (1880).

Discipline although essential to an effective police force as it is to the military is clearly of a different type.[6] Instant unquestioning obedience has been found essential to a soldier in action and his training and its attendant discipline is designed to develop such obedience. The same type of instant unquestioning obedience is not necessary for an effective police force. See Greenwald v. Frank, supra at 94. Rather it has been suggested that the military model of organization and discipline must not be followed too closely as a policeman unlike a soldier frequently acts individually on his own initiative and not subject to the immediate supervision of his superiors. See W. Lee, A History of Police in England at 401-402.

[5] Police are given the powers of a constable. N.Y. Village Law § 8-802 (McKinney) used under reference from N.Y. Unconsol. Laws § 5732; Suffolk Constitution art. XII § 1208. See N. Y. Town Law § 39.

[6] At issue in Masterson, see n. 2, and similar New York cases was the propriety of the dismissal of the patrolmen from the force for such malfeasance as negligent homicide or appearing on duty while intoxicated. There is little similarity between the disciplinary questions in these cases and Order No. 71-1 which the district court apparently found designed to inculcate discipline.

This is not to say, however, that the special nature of the police officer's duties and the recognized need to maintain a singular degree of discipline are immaterial. These factors are relevant to the determination of the validity of the General Order bearing not on the nature of plaintiff's rights, but on the existence of a legitimate state interest to be reasonably advanced by the regulation.[7] A policeman does not, however, waive his right to be free from arbitrary and unjustifiable infringement of his personal liberty when he elects to join the force.[8] See Garrity v. New Jersey, 385 U.S. 493, 499-500 (1967); Muller v. Conlisk, 429 F. 2d 901, 904 (7th Cir. 1970).

[7] See, e.g., Linquist v. City of Coral Gables, 323 F. Supp 1161 (S.D. Fla. 1971).

[8] However, with the exception of Hunt v. Board of Fire Commissioners of Massapequa Fire District, 68 Misc. 2d 261, 327 N.Y.S. 2d 36 (1971), the New York courts have sustained the validity of grooming regulations for firemen and policemen. See Olsewski v. Council of Hempstead Fire Department, 70 Misc. 603, 334 N.Y.S. 2d 504, 506 (Sup. Ct. 1972) (based on a showing of safety needs); Austin v. Howard, 39 App. Div. 2d 76, 332 N.Y.S. 2d 434 (1972) (upheld suspension of fireman for failure to wear proper boots). The Court of Appeals affirmed without opinion an order upholding the regulations at issue here, in a case brought by a Nassau County policeman. Greenwald v. Frank, —— N.Y. —— (May 30, 1973). The New York Supreme Court had recognized that a policeman has a constitutional interest in determining his own appearance but found that interest outweighed by the "powerful countervailing interest" of the police department and the general public." 70 Misc. 2d 632, 639, 334 N.Y.S. 2d 680, 688 (Sup. Ct. 1972). The Appellate Division while affirming the order held that the appeal failed to raise substantial constitutional issues. Its affirmance was based on a finding that "there should be neatness and discipline in a large quasi-military organization such as the Nassau County Police Department . . ." 40 App. Div. 2d 717, 337 N.Y.S. 2d at 225.

Appendix B.

While it has been argued that hair length controversies are much ado about nothing, we think there is a substantial constitutional issue raised by regulation of the plaintiff's hair length. The question is whether the government may interfere with the physical integrity of the individual and require compliance with its standard of personal appearance without demonstrating some legitimate state interest reasonably requiring such restriction on the individual. The first, third, fourth, seventh and eighth circuits have held that the Constitution limits the state's right to regulate the personal appearance of its citizens.[9] We agree. See Olff v. East Side Union High School District, 404 U.S. 1042 (Douglas, J., dissenting from denial of certiorari).

An increasing number of courts have recognized the right of the individual to style his own appearance, but there has been little consensus on the source of constitutional protection. The right has been found in the First

[9] Several district courts in this circuit have so ruled. In Seale v. Manson, 326 F. Supp. 1375 (D. Conn. 1971), the court held that a prisoner's choice of hair length and facial hair is a personal liberty protected by due process and that without evidence supporting the prison's rationale for prohibiting beards and goatees a prisoner could not be forced to shave. A school's regulation of hair style was held to be violative of a substantial right of the student where no compelling state interest was shown for the regulation. See Durham v. Pulcifer, 312 F. Supp. 411 (D. Vt. 1970); but see Crossen v. Fatsi, 309 F. Supp. 114, 118 (D. Conn. 1970). A military prohibition on the wearing of short-haired wigs, admittedly neat and conforming to Army appearance requirements and not interfering with the proper execution of a reservist's duty was held an abuse of discretion and an unjustifiable interference with the right of the reservist to wear long hair in off-duty hours. Harris v. Kaine, 352 F. Supp. 769 (S.D.N.Y. 1972). While these cases and many of those in the other circuits have not concerned uniformed police and fire departments, the basic issue remains the same—the right of the state to impose standards of hair styling. The different status of the individual raising the claim bears on the question of whether the right is outweighed by a legitimate state interest.

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Amendment, Arnold v. Carpenter, 459 F. 2d 939 (7th Cir. 1972); the Ninth Amendment, Bishop v. Colaw, 450 F. 2d 1069 (8th Cir. 1971); the Equal Protection Clause of the Fourteenth Amendment, *Massie* v. *Henry*, 455 F. 2d 779 (4th Cir. 1972), and the due process guarantees of the Fifth and Fourteenth Amendments, Stull v. School Board of the Western Beaver Junior-Senior High School, 459 F. 2d 339 (3rd Cir. 1972); Richards v. Thurston, 424 F. 2d 1281 (1st Cir. 1970); Massie v. Henry, supra.

We may well base the right on the guarantee under the Due Process Clause of personal liberty of "a rational continuum which, broadly speaking, includes a freedom from all substantial arbitrary impositions and purposeless restraints. . . ." Poe v. Ullman, 367 U.S. 497, 543 (1961) (Harlan, J., dissenting). Cf. Roe v. Wade, —— U.S. ——, 93 S. Ct. 705, 726 (1973); Rochin v. California, 342 U.S. 165 (1952). Personal liberty is not composed simply and only of freedoms held to be fundamental but includes the freedom to make and act on less significant personal decisions without arbitrary government interference. Limitation of such a right requires some showing of public need.

We hold only that choice of personal appearance is an ingredient of an individual's personal liberty, and that any restriction on that right must be justified by a legitimate state interest reasonably related to the regulation. Here the department has failed to make the slightest showing of the relationship between its regulation and the legitimate interest it sought to promote. The sole presentation by the department was the affidavit submitted by Deputy Commissioner Kelley. That affidavit commented only that the regulation was directed at both uniformed and non-uniformed officers, it was silent on the question of the necessity for the regulation in maintaining discipline. In the absence of the requisite justification by the depart-

ment, dismissal of the complaint under Rule 12 (b) (6) was in error. Nor would summary judgment on the affidavit submitted be justified since a genuine issue was presented for trial. We imply no views on the merits. We indicate simply that, at trial, the Commissioner has the burden of establishing a genuine public need for the regulation.

Reversed and remanded.

Memorandum of Decision and Order of Justice Mishler, U.S.D.J., dated November 30, 1971.

UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF NEW YORK

[SAME TITLE]

For the reasons expressed in the memorandum of decision dated Noember 3, 1971 the complaint is dismissed.

The Clerk is directed to enter judgment in favor of the defendant and against the plaintiff dismissing the complaint, and it is

SO ORDERED.

JACOB MISHLER
U. S. D. J.

Memorandum of Decision and Order of Justice Mishler, U.S.D.J., dated November 8, 1971.

UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF NEW YORK

[SAME TITLE]

Plaintiff, a patrolman employed by the Suffolk County Police Department and president of Suffolk County Patrolmen's Benevolent Assoication, seeks a preliminary injunction enjoining enforcement of general order number 71-1, which order amends Chapter 2 of the Rules and Procedures of the Suffolk County Police Department, which became effective August 1, 1971. The order sets grooming standards for members of the Suffolk County Police Department.[1] Under the order, beards and goatees are forbidden; sideburns may "not extend below the lowest part of the exterior ear opening"; and mustaches must be short and neatly trimmed. The affidavit in support of the application states that community standards are less restrictive and that compliance with the order will, in effect, set him apart from the community in violation of his constitutional rights. The claim sets forth First and Fourteenth Amendment violations in that order deprives plaintiff of his right of free expression, due process and equal protection of law.

Uniformity of dress is part of the discipline of the local police department. It is the visible sign of the presence of the law. How the police officer appears to the public is one factor in effective law enforcement. Regulations involving dress and grooming are better left to the officials who are

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[1] Order set out in appendix.

aware of the local customs and taboos. It would be inappropriate for the court to frame such regulations, absent a clear showing of a violation of a constitutional right.

Circuit (now Chief) Judge Friendly in *Negron* v. *Wallace*, 436 F.2d 1139, 1141 (2d Cir. 1971), discussing a claim brought in the federal court under 42 U.S.C. § 1983, said, "Suits under that statute should not be lightly brought." He suggested that such claims be resolved ". . . by calm discussions with the state officials in the absence of any litigation whatsoever."

Turning to the merits of the application, authority for defendant's position is found in decisions reviewing army regulations concerning grooming. *Doyle* v. *Koelbe*, 434 F.2d 1014 (5th Cir. 1970). Plaintiff would distinguish those cases from the instant case on the ground that the New York Criminal Procedure Law includes in the definition of police officer certain members of the New York City Fire Department and investigators on the staff of county district attorneys.

The intent of the regulation is that it apply to uniformed police officers. This is evident from the list of exemptions submitted to the court by defendant as of August 18, 1971.[2]

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[2] Those exempted to August 18, 1971:

4 Detectives—Intelligence Squad, Undercover assignment, must frequently associate with persons and in circles where extreme hair styling is prevalent.

48 Detectives—Narcotics Squad.
Undercover assignment as above.

4 Detectives—Special Investigations Squad.
(Gambling, Vice, etc.)
Undercover assignment as above.

1 Detective —Robbery Squad.
Special assignment to infiltrate members of gang.

Application of the regulation to members not in uniform might very well bring the regulation within the prohibitions of the Constitution. *See Griswold* v. *Connecticut*, 381 U.S. 479, 85 S.Ct. 1678 (1965).

Nor is the attempt by the plaintiff to distinguish police from the military for the purposes of the regulation persuasive. The courts have held that members of the armed forces do not have their full constitutional rights while serving in the service. *Raderman* v. *Kaine*, 411 F.2d 1102 (2d Cir. 1969). In *Raderman*, the court indicated that it did not intervene in the matter involving a directive revoking one permitting long hair because ". . . there is clearly no action by the military which goes far beyond any rational exercise of discretion."

The plaintiff further distinguishes the duties of the police from that of the military in pointing out that the police officer has duty and non-duty hours. The court, assuming this questioned state, would nevertheless find a closer fact pattern in the case of a member of the National Guard.

In *Gianatasio* v. *Whyte*, 426 F.2d 908 (2d Cir. 1970), the plaintiff enlisted in the National Guard. Plaintiff was the manager of a shoe bazaar in Westport, Connecticut and claimed that his long hair helped him in his job and that it was essential to his civilian work. Because of his refusal to cut his hair as required by Army regulations, he was ordered to report for active duty. The court dismissed the attack on the validity of the regulation with the observation that the military has wide discretion in regulating hair length. *Gianatasio* v. *Whyte*, *supra*, at p. 911.

Motion for a preliminary injunction is denied, and it is

Appendix B.

So Ordered.

The court believes the claim is insufficient as a matter of law. It is however reluctant to dismiss the complaint without affording plaintiff an opportunity to argue the point. The court sets the matter down for argument on November 19th, 1971 at 10:00 A.M. All briefs to be submitted by November 15th, 1971.

Jacob Mishler
U. S. D. J.

APPENDIX C

Conflicting Opinion.

Larry Stradley, Appellant,

v.

Richard R. Andersen, as Chief of the Division of Police, Department of Public Safety, City of Omaha, Nebraska, Appellee.

No. 72-1698.

United States Court of Appeals,
Eighth Circuit.

Submitted April 12, 1973.

Decided May 17, 1973.

Police officer brought civil rights action challenging a general order which was promulgated by police chief and which related to standards of appearance and hair style for police officers. The District Court, 334 F.Supp. 72, dismissed the complaint and the police officer appealed. The Court of Appeals, Eighth Circuit, 456 F.2d 1063, reversed and remanded. On remand, the United States District Court for the District of Nebraska, Robert V. Denney, J., 349 F. Supp. 1120, upheld the regulation and the police officer appealed. The Court of Appeals, Lay, Circuit Judge, held that the general order did not deny individual officer due process in view of competing and legitimate interest of public safety division in maintaining an efficient and disciplined police force and public confidence as weighed against individual officer's personal likes or dislikes.

Affirmed.

Appendix C.

Before LAY and STEPHENSON, Circuit Judges, and TALBOT SMITH,* Senior District Judge.

LAY, Circuit Judge.

The Omaha Department of Public Safety, Division of Police, acting by and through its Police Chief, Richard R. Andersen, has promulgated a general order relating to standards of appearance and hair style for police officers. The plaintiff, Larry Stradley, an officer in good standing, brought this action under Section 1983 of Title 42 of the United States Code, alleging that his constitutional rights were violated by enforcement of the order. He alleges that he wears his hair and clothing neatly and in a well-groomed fashion with a portion of his hair extending slightly below his ears. He asserts that this does not restrict or hamper him in any way in the performance of his duties. He brought the suit as a class action for himelf and other officers similarly situated. The district court, after trial on the merits, found that the regulation was reasonable and calculated to achieve legitimate state interests. Stradley v. Andersen, 349 F.Supp. 1120 (D.Neb.1972). We affirm.[1]

The regulation reads:

> "This order pertains to Chapter I, Section 19, of the Rules and Regulations of the Police Division, 'Unprofessional actions, or conduct, while on duty or in uniform.'
>
> "All personnel shall be alert, efficient, neat and business-like before the public.

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* The Honorable Talbot Smith, Senior United States District Judge, Eastern District of Michigan, sitting by designation.

[1] The district court's earlier opinion requiring exhaustion of state remedies before federal trial, 334 F.Supp. 72 (D.Neb. 1971), was reversed and remanded for a plenary trial, 456 F.2d 1063 (8 Cir. 1972).

Appendix C.

> "Hair appearance has become quite a problem as far as appearance before the public is concerned within the Omaha Police Division.
>
> "Numerous comments, complaints, and criticism have been directed toward the Police Division based on outlandish types of hair styles. In order to reasonably conform with the general public, the following regulations shall be applicable, and shall be effective as of 1 June 1971, for all members of the Omaha Police Division.
>
> "HAIR: Hair must be evenly tapered on sides and back. No hair will lap or curl over the ears or shirt collar. Hair style cannot interfere with the normal wearing of the uniform headgear. This means that the hat of the uniform, when properly worn, must be in the close proximity to both the ears and the eyebrows of the person wearing the hat in a standard appearing manner.
>
> "SIDEBURNS: Maximum length of sideburns will be to the bottom level of the ear lobe. No flair (mutton-chops). Sideburns must be evenly tapered, cut parallel to the ground and can be no wider than one inch.
>
> "MUSTACHE: Mustaches must be neatly trimmed and tapered. Mustaches shall not extend beyond the corner of the mouth looking at a person directly to his face. No handlebar or Fu Manchu types of mustaches will be allowed.
>
> "GOATEE OR BEARD: Beards and Goatees will not be allowed under any conditions. The face must be clean shaven for working purposes other than specified above.
>
> "Exceptions to these rules shall only be allowed for officers who are working in the undercover type of ac-

> tivity within and for the Omaha Police Division. The special exemptions for this purpose shall be by request and directive of the Deputy Chief in charge of the Criminal Investigations Bureau."

In essence, Chief Andersen testified that the purposes of the regulation were (1) the maintenance of an efficient and disciplined police force and (2) the maintenance of public confidence.

The order is not attacked as being unreasonable. The basis of plaintiff's argument is that "[p]olicemen, like firemen, probation officers, teachers, other classes of public employees, public school students, and other persons have a federal constitutional right to choose their personal hair style and length." The argument is made that the defendant has failed to sustain its burden that such an order is necessary to enable police officers to carry out the mission of a city police department.

The plaintiff further contends that this court's opinion in Bishop v. Colaw, 450 F.2d 1069 (8th Cir. 1971), upholding the right of a school boy to wear whatever hair style he and his parents desired, is equally applicable to a police officer. We there found that the right involved, although not cognizable on a First Amendment ground, was based on the freedom to govern one's personal appearance and commanded protection under the Due Process Clause of the Fourteenth Amendment. However, we acknowledged that recognition of this right was not unconditional and required us to weigh the competing interests asserted. We found that the school authorities failed to demonstrate any necessity of the regulation of hair length and style.

Appealing contrasts are urged to justify individual styling—thus plaintiff pleads that the order will allow mustaches "such as that of Adolph Hitler, but not permit those

modeled after Mark Twain, Dean Acheson or other prominent and respected persons" We cite these comparisons because we think the essential weakness of the argument lies in this contrast—plaintiffs are not serving in the role of dictators, authors or statesmen, but rather, they have undertaken responsible roles in a disciplined organization as public officers to enforce and maintain law and order in a given community. Herein lies the distinction between weighing the competing interests of a school board and a school student.

Traditionally, the policeman has been a highly trained officer who is entrusted with a responsible and oftentimes dangerous role as a public servant. His work habits on active duty require disciplined conduct, regimentation and frequent strict adherence to regulation and authorized detail. His job is often a delicate and difficult task to lawfully act against those who are sometimes unwilling to recognize any rules or ethics. It is essential that a policeman's training be such that he be taught to obey strict disciplinary procedure and rules in order to lend practical assurance that he will follow command and not abuse his awesome authority. As part of this discipline the police department has determined that an officer shall be neat in his appearance. There can be little argument that this requirement constitutes a legitimate departmental interest.

[1, 2] We reject the idea that community standards provide a legitimate basis in weighing constitutional rights guaranteed to the individual. Whether public acceptance or rejection of a particular hair style exists in one community or another should not be a standard of concern to a federal court. What must be controlling to the court in evaluating competing interests is whether the policy of the state espouses a societal interest which outweighs the individual concern. Thus, what is essential here is that the

Public Safety Department stresses the need for public respect of its officers and that it feels such respect flows in part from the officers' individual appearance. If Chief Andersen misjudges, as plaintiff suggests, what necessary measures should be taken to achieve community respect, this basically must be the department's concern, not ours.

[3] One may argue that how one wears his hair has little to do with whether an officer might effectively apprehend criminals or otherwise fulfill his assigned mission as a policeman. This misses the mark. The critical factor is that police officialdom deems it necessary that the officer be well disciplined and that as part of that internal discipline, he be required to maintain a neat appearance. The degree of that appearance, as long as it is not arbitrary or unreasonable, should not be the court's concern.

[4] Unlike the school cases, those officials who have spent their life in police work, who are trained in law enforcement discipline, possess far better empirical judgment of what is essential to achieve an efficient and disciplined police force than the officers themselves, the public or the predeliction of individual judges. If this results in a problem of low morale of police personnel, which plaintiff contends, this too is Chief Andersen's dilemma, not the courts'. This does not mean that the courts will ignore an arbitrary edict which might deprive a police officer of his sense of dignity or morality as a human being. But we are not dealing with arbitrariness—the only issue before us is the authority of a Public Safety Division of a municipality to set standards of neat appearance for its personnel balanced against the individual rights of a police officer to appear as he likes. In light of this competing and legitimate interest of the Public Safety Division, as weighed against the individual officer's personal likes or dislikes, we sustain the regulation. In accord Greenwald

v. Frank, 70 Misc.2d 632, 334 N.Y.S.2d 680 (Sup.Ct. 1972); Dwen v. Barry, 336 F.Supp. 487 (E.D.N.Y.1971);[2] cf. Doyle v. Koelbl, 434 F.2d 1014 (5 Cir. 1970), cert. denied, 402 U.S. 908, 91 S.Ct. 1380, 28 L.Ed.2d 649 (1971)

For the reasons herein stated, the judgment of the district court is affirmed.

LARRY STRADLEY, Plaintiff,

v.

Richard R. ANDERSEN, as Chief of the Division of Police, Department of Public Safety, City of Omaha, Nebraska, Defendant.

Civ. No. 71-L-228.

United States District Court,
D. Nebraska.

Oct. 27, 1972.

Suit under Civil Rights Act. After complaint was dismissed, 334 F.Supp. 72, the Court of Appeals, 456 F.2d 1063, determined that complaint was not subject to dismissal for reasons of comity inhering in abstention doctrine, and reversed and remanded for a trial on the merits. On remand, the District Court, Denney, J., held that order of municipal employer governing length and style of hair and mustaches for police officers was reasonably calculated to

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[2] Plaintiff urges that in the *Dwen* case the regulation applied only to uniformed officers. The present regulation encompasses all police department personnel with special exceptions allowed for those officers working in undercover activity. The district judge in *Dwen* expressed a concern that if applied to all members of the police force it might fall within constitutional prohibitions. By our holding and for the reasons we have generally discussed, we disagree.

achieve legitimate state interests of allowing immediate public recognition of bona fide police officers and of projecting a "neutral" appearance and was not unconstitutional as interfering with right of officers to choose their individual hair style or length, nor did order amount to impermissible sex discrimination by reason of fact that it did not apply to female officers.

Order accordingly.

MEMORANDUM OPINION

DENNEY, District Judge.

This case comes before the Court upon application of the plaintiff for a preliminary and permanent injunction restraining enforcement of order #48-71 promulgated by Chief Richard R. Andersen, of the City of Omaha Police Division. The action is prosecuted as a class action on behalf of the plaintiff and all others similarly situated. Pursuant to order of the 8th Circuit Court of Appeals, 456 F.2d 1063, this Court has conducted a hearing on the merits of plaintiff's application and now renders its opinion.

[1] The Court would take this opportunity to point out that, although it now appears to the Court that at least in this Circuit it is well settled that any person claiming deprivation of any possible civil right need not make an attempt to solve his problem with his immediate superior nor seek relief from his own local courts before he can command this Court to interfere via 42 U.S.C.A. § 1983, the foundation for this rule is legally questionable and has had disastrous effects on the dockets of the district courts.

The rule regarding no exhaustion has its roots in Monroe v. Pape, 365 U.S. 167, 81 S.Ct. 473, 5 L.Ed.2d 492 [1961]. In *Monroe*, the Supreme Court traced the legislative history of § 1983 and concluded that the intent of Congress was "to provide a federal remedy where the state remedy, though adequate in theory, was not available in practice."[1] Thus § 1983 was enacted with particularly the "lawless conditions existing in the South in 1871"[2] in mind. From this, the Court concluded that the "federal remedy [under § 1983] is supplementary to the state remedy, and the latter need not be first sought and refused before the federal one is invoked."[3] The Court suggests that a more responsive rule to the legislative history would be that exhaustion is not required where the state remedy, adequate in theory, is not available in practice. This would foster and give incentive to the States to continue to be as zealous in the protection of federal constitutional rights as the federal courts. It is time for the federal judiciary to recognize that Federal Courts are not the sole protectors of constitutional rights and that the dual nature of sovereignty in the United States obligates the federal court to respect their State counterparts. As this Court previously stated, quoting no less than Chief Justice Burger:

> "People speak glibly of putting all the problems of pollution, of crowded cities, of consumer class actions and others in the federal courts. We should look more to state courts familiar with local conditions and local problems." Alberda v. Noell, 322 F.Supp. 1379, 1382 [E.D.Mich.1971], Stradley v. Andersen, 334 F.Supp. 72 [D.Nev.1971].

The desirability of the rule as to the facts of this case is evident. Chief Andersen testified that the order was issued

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[1] Monroe v. Pape, 365 U.S. 167, 174, 81 S.Ct. 473, 477, 5 L.Ed.2d 492 [1961].

[2] Id.

[3] Id. p. 183, 81 S.Ct. p. 482.

on May 17, 1971, but that it was not to be effective until June 1, 1971. The Chief stated the interim period was designed to allow any interested officer an opportunity to come in and discuss the regulation if he felt it was not adequate or should be modified. It was Chief Andersen's testimony that he was open to suggestions during the interim period, but no one approached him directly. Instead, just before the regulation was to be effective, he was served with a temporary restraining order issued by this Court. Had the plaintiff attempted to discuss the matter with Chief Andersen, this litigation might well have been avoided. Chief Andersen was the first step in plaintiff's administrative remedies and whether or not plaintiff should have had to exhaust his administrative remedies is not at issue. At least, he should have had to attempt the first step.

The order in question regulates the length of hair permissible for certain male members of the Omaha Police Division.[4] (Appendix A)

The plaintiff does not contend that it is not proper for Chief Andersen to promulgate rules and regulations for the operation of the Police Division nor that grooming cannot be a proper subject of regulation. The plaintiff only attacks the validity of order #48-71.

The threshold inquiry of the Court is whether or not the police officers have any constitutionally protected rights relating to hair style or length that order #48-71 might infringe.

[2, 3] It has become the law in this Circuit, through the vehicle of cases involving schools and students, that each

[4] It was the testimony of Chief Andersen that, although the order as promulgated was sufficiently broad to encompass the entire Division, it was not intended to apply to any female officers or male undercover officers and had not been enforced against such individuals.

member of the general population possesses a right to choose his or her own style and length of hair and that such choice is protected by the Ninth Amendment of the United States Constitution. Bishop v. Colaw, 450 F.2d 1069 [8th Cir. 1971]. The Supreme Court has had occasion to hold that "policemen, like teachers and lawyers, are not relegated to a watered-down version of constitutional rights." Garrity v. New Jersey, 385 U.S. 493, 87 S.Ct. 616, 17 L.Ed.2d 562 [1967]. It follows that at least in this Circuit police officers have a constitutional right to choose their individual hair style or length.

[4] The Court's inquiry is not, however, finished because personal freedoms are not absolute and must give way when outweighed by legitimate State interests. Bishop v. Colaw, *supra,* 450 F.2d at p. 1075.

[5] Here, the Court is convinced that the order served two legitimate state interests, either of which would be a proper basis for the order.

Chief Andersen testified that the order was in part based upon the need to have uniform standards of grooming throughout the force. This need is not unlike that which causes the division to require a certain style of shirt and hat or that all officers should wear black shoes. The testimony of plaintiff's witnesses did not dispute the need for standard uniforms for officers. Courts such as the United States District Court for the Eastern District of New York have held uniformity of dress, including regulation of grooming, is a legitimate State Interest. Dwen v. Barry, 336 F. Supp. 487 [E.D.N.Y. 1971]. Chief Andersen elaborated in his testimony as to the necessity of such uniformity, saying that it is important to the safety of the public that the public be able to recognize police officers immediately. It is apparent to the Court that any hesitation in seeking assistance or cooperating with officers because of

the unique position of policemen could mean the difference between life and death. The public should not have to guess who is and who is not a bona fide officer of the law. Uniformity of dress prevents such problems. Grooming standards, as part of uniform regulations, are a legitimate State interest. The desire of the police officer for individuality in the selection of his hair style and length is outweighed by the legitimate State interest in immediate public recognition of bona fide police officers.

It was Chief Andersen's expert opinion, based upon his 21 years of experience as a police officer, that there exists a direct relationship between the personal appearance of a police officer and his ability to effectuate his responsibilities. The Chief stated that, in his opinion, the policeman should project a "neutral" appearance, identifying with neither far-out section of the general public. This will enable the Police Division to obtain a maximum amount of respect from the community it is charged with protecting. The Court is equally convinced that such neutrality is a legitimate State interest. It is beyond argument that if the majority of the public was in open rebellion over the length of policemen's hair it would impair the effectiveness of the individual officer. Although such outrage is not present herein, the Chief did not testify that numerous complaints had been received. The Court is of the opinion that from such complaints the Chief could legitimately draw the inference that the effectiveness of some of his officers was not being maximized because portions of the public did not have the highest respect for the Police Division solely because of the personal appearance of some of its officers.

[6] It is the Court's opinion that projecting a "neutral" appearance, because of its relationship to the effectiveness of the police officer and the respect of the public, outweighs the police officer's desire to assert his individuality by

identifying with a particular segment of society through his hair length or style.

It remains to the Court to determine whether the regulation is reasonably related to the legitimate State interest sought to be attained. Turner v. Fouche, 396 U.S. 346, 90 S.Ct. 532, 24 L.Ed.2d 567 [1970].

[7, 8] The testimony of the plaintiff's witnesses revealed that there was a lack of agreement among the dissident police officers as to how the regulation should be properly drawn. The plaintiff himself, in the hearing of June 2, 1971, testified that police officers should be allowed Fu Manchu mustaches, but not goatees. During the hearing of October 2, 1972, witness Archer for the plaintiff testified that he had left the force because of the regulation, but that he did not believe that policemen should be allowed to have shoulder length hair similar to what he now wore. It is evident that, no matter what regulation Chief Andersen was finally able to devise, not everyone could be pleased. Chief Andersen testified that the regulation was not lightly drawn. Over a period of some two months, he and his four deputy chiefs examined similar regulations from other communities. In the end, they considered the average standards of the community in which the officers had to perform their duties and carefully drafted the regulation with an eye to allowing for a certain range of individuality within the Division.[5] The Court has examined the regula-

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[5] It is appropriate that the regulation was based, in part, upon contemporary community standards as to what the public would accept in the personal appearance of their public servants. Community standards have often been used to gauge the limits of constitutional rights. *See*, e. g., Roth v. United States, 354 U.S. 476, 77 S.Ct. 1304, 1 L.Ed.2d 1498 [1957]. What a community in California might accept in its public servants quite properly may not be the same as Nebraska's requires.

tion at some length and cannot say that on its face nor from the evidence adduced it fails to be calculated to reasonably achieve the legitimate State interests as denominated by the Court. The regulation provides for hair styles and lengths somewhere in the middle range of those that abound today.

[9] It is the conclusion of the Court that the defendant has sustained his burden of proving the necessity of order #48—71 of Chief Andersen and that plaintiff's application for injunctive relief should be denied. The regulation is reasonable and calculated to achieve legitimate State interests. An Order in accordance with this opinion will be entered contemporaneously herewith.[6]

APPENDIX A

DEPARTMENT OF PUBLIC SAFETY DIVISION OF POLICE
OMAHA NEBRASKA

Date: 17 May 1971
Monday

DIVISION GENERAL ORDER #48—71

RE: STANDARDS OF APPEARANCE FOR POLICE OFFICERS

This order pertains to Chapter I, Section 19, of the Rules and Regulations of the Police Division, "Unprofessional actions, or conduct, while on duty or in uniform."

---

[6] Plaintiff has also argued that order #48-71 amounts to impermissible sex discrimination, since it does not apply to female officers. The Court is of the opinion that the reasons herein cited for sustaining the regulation as to the Ninth Amendment apply as well to this contention of plaintiff and that the classification is not arbitrary within the meaning of Reed v. Reed, 404 U.S. 71, 92 S.Ct. 251, 30 L.Ed.2d 225 [1971].

All personnel shall be alert, efficient, neat and business-like before the public.

Hair appearance has become quite a problem as far as appearance before the public is concerned within the Omaha Police Division.

Numerous comments, complaints, and criticism have been directed toward the Police Division based on outlandish types of hair styles. In order to reasonably conform with the general public, the following regulations shall be applicable, and shall be effective as of 1 June 1971, for all members of the Omaha Police Division.

HAIR: Hair must be evenly tapered on sides and back. No hair will lap or curl over the ears or shirt collar. Hair style cannot interfere with the normal wearing of the uniform headgear. This means that the hat of the uniform, when properly worn, must be in close proximity to both the ears and the eyebrows of the person wearing the hat in a standard appearing manner.

SIDEBURNS: Maximum length of sideburns will be to the bottom level of the ear lobe. No flair (mutton-chops). Sideburns must be evenly tapered, cut parallel to the ground, and can be no wider than one inch.

MUSTACHE: Mustaches must be neatly trimmed and tapered. Mustaches shall not extend beyond the corner of the mouth looking at a person directly to his face. No handlebar or Fu Manchu types of mustaches will be allowed.

GOATEE OR BEARD: Beards and Goatees will not be allowed under any conditions. The face must be clean shaven for working purposes other than as specified above.

Appendix C.

Exceptions to these rules shall only be allowed for officers who are working in the undercover type of activity within and for the Omaha Police Division. The special exemptions for this purpose shall be by request and directive of the Deputy Chief in charge of the Criminal Investigations Bureau.

By order of

/jp

[s] Richard R. Andersen
Richard E. Andersen
Chief of Police

Supreme Court, U. S.
FILED
JUL 12 1975
MICHAEL RODAK, JR., CLERK

APPENDIX

Supreme Court of the United States

OCTOBER TERM, 1975

No. 74-1269

JOHN L. BARRY, Commissioner of the SUFFOLK COUNTY POLICE DEPARTMENT,

Petitioner,

against

THOMAS DWEN, as President of the Suffolk County Patrolmen's Benevolent Association and THOMAS DWEN, Individually,

Respondent.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

PETITION FOR CERTIORARI FILED APRIL 8, 1975
CERTIORARI GRANTED MAY 27, 1975

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Relevant Docket Entries.

CIVIL DOCKET

U.S.D.C., E.D.N.Y

THOMAS DWEN, as President of the Suffolk County Patrolman's Benevolent Association and THOMAS DWEN, individually,

against

JOHN L. BARRY, Commissioner of the Suffolk County Police Department.

DATE	FILINGS—PROCEEDINGS
8/ 4/71	Complaint filed. Summons Issued.
8/ 6/71	Summons returned & filed/executed as to service of S/C & Order to show cause.
8– 6–71	Order to show cause with proof of service filed, for injunction etc. (ret Aug 20, 1971).
8–20–71	Before MISHLER, CH. J.—Hearing on show cause for injunction Motion argued—Decision reserved.
11– 8–71	By MISHLER, CH. J.—MEMORANDUM OF DECISION and ORDER FILED. Motion for a preliminary injunction is denied. It is ORDERED the court believes the claim is insufficient as a matter of law. It is however reluctant to dismiss the complaint without affording pltff an opportunity to argue the point. The Court sets the matter down for argument on Nov 19 1971 at 10:00 A.M. • • •
11–18–71	Affidavit of Eugene R. Kelley filed.

Relevant Docket Entries.

DATE	FILINGS—PROCEEDINGS
12- 1-71	By MISHLER, CH. J.—MEMORANDUM of DECISION & ORDER FILED. FOR THE REASONS EXPRESSED IN the memorandum of decision dated 11-8-71 the complaint is dismissed. The Clerk is directed to enter judgment in favor of the deft and against the pltff dismissing the complaint, and it is So ORDERED.
12- 2-71	JUDGMENT FILED. It is ordered that judgment is entered in favor of deft and against the pltff dismissing the complaint. • • •
12-10-71	NOTICE OF APPEAL FILED. (copy of appeal mailed to C/A and to George W. Percy, Jr. County Atty, Suffolk Co., County Center, Riverhead, N.Y.
1- 7-72	ANSWER of deft file.
1-18-72	Record on appeal certified and mailed to Court of Appeals.
2/ 6/73	Certified copy of order of C of A dismissing appeal filed.
10-24-73	Certified copy of judgment and copy of opinion received from C of A reversing judgment of district court & remanding it for further proceedings, etc. filed.
12- 7-73	Before MISHLER, CH. J.—Case called & adj'd to 6-21-74.
4- 3-74	Before MISHLER, CH. J.—Case called. Trial ordered and begun (non-jury). Both sides rest. Decision reserved. Trial concluded.

Relevant Docket Entries.

DATE	FILINGS—PROCEEDINGS
5-31-74	By MISHLER, CH. J—Memorandum of decision and order dtd 5-30-74 granting judgment in favor of pltff and against deft filed. Settle judgment.
6-11-74	By MISHLER, CH. J—JUDGMENT dtd 6-11-74 granting permanent injunction against enforcing Section 2/2.16 of the Rules and Procedures of the Suffolk County Police Dept filed.
6-21-74	Notice of appeal filed. Duplicate mailed to C of A.
1/20/75	Certified copy of Judgment received from court of appeals and filed affirming judgment of the District Court with costs to be taxed against the appellant.

Relevant Docket Entries.

GENERAL DOCKET

UNITED STATES COURT OF APPEALS

FOR THE SECOND CIRCUIT

Case No. 72-1037

DATE	FILINGS—PROCEEDINGS
12-16-71	Filed copy of notice of appeal.
1-19-72	Filed record (original papers of district court).
6-14-73	Argument heard (by: Kaufman, Ch.J., Smith C.J. and Bryan, D.J.).
8-22-73	Judgment Reversed and Action Remanded, Smith, C.J.
8-22-73	Filed judgment.
10-19-73	Issued Mandate (opinion & judgment).

Case No. 74-1900

DATE	FILINGS—PROCEEDINGS
6-24-74	Filed copies of docket entries and notice of appeal.
1- 9-75	Argument heard (By: Smith, Oakes, Timbers, CJJ).
1 -9-75	Affirmed in open court.
1- 9-75	Filed judgment.
1-16-75	Issued mandate (judgment).
4-14-75	Filed notice of filing of petition for writ of certiorari (S.C.#74-1269).
6- 2-75	Filed certified copy of order of Supreme Court granting petition for writ of certiorari.

Notice of Appeal.

UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF NEW YORK

Filed June 18, 1974

THOMAS DWEN, as President of the Suffolk County Patrolmen's Benevolent Association and THOMAS DWEN, individually,

Plaintiff,

against

JOHN L. BARRY, Commissioner of the Suffolk County Police Department,

Defendant.

Case No. 71 C 1020

NOTICE is hereby given that JOHN L. BARRY, Commissioner of the Suffolk County Police Department, defendant above-named, hereby appeals to the United States Court of Appeals for the Second Circuit from the judgment of the HON. JACOB B. MISHLER dated June 11, 1974 adjudging that Section 2/2.16 of the Rules and Procedures of the Suffolk County Police Department is unconstitutional and void and that the Suffolk County Police Commissioner, his agents, servants, employees and all persons acting in active concert with him are hereby permanently enjoined from enforcing Section 2/2.16 of the Rules and Procedures of the Suffolk County Police Department.

Dated: Northport, New York
June 18, 1974

S/ Patrick A. Sweeney
PATRICK A. SWEENEY
Of Counsel to GEORGE W. PERCY, JR.
Attorney for Defendant
691 Fort Salonga Road
Northport, New York 11768
(516) 757-6515

Minutes of Hearing before Hon. Jacob B. Mishler, U.S.D.J. on April 3, 1974.

UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF NEW YORK

[SAME TITLE]

United States Courthouse
Brooklyn, New York

April 3, 1974
10:15 o'clock a.m.

Before: HONORABLE JACOB B. MISHLER, U.S.D.J.

APPEARANCES:

MEYER & WEXLER, Esqs., Attorneys for Plaintiff, 28 Manor Road, Smithtown, New York

By: LEONARD WEXLER, Esq.

PATRICK A. SWEENEY, Esq., Attorney for Defendant, 691 Fort Salonga Road, Northport, New York 11768

The Clerk: Civil cause for trial, Dwen against Barry.
Mr. Wexler: Both sides ready.
Mr. Sweeney: Both sides ready.
The Court: Who appears for the plaintiff?
Mr. Wexler: I do, your Honor, Leonard Wexler.
The Court: You are Mr. Sweeney?
Mr. Sweeney: Yes, your Honor.

Minutes of Hearing.

The Court: Would you like to make a brief statement outlining the position of the plaintiff here?

Mr. Wexler: Yes, your Honor. The plaintiff brought its action in 1971, concerning the hair regulation of the then commissioner dated July, 1971, placing certain regulations on hair. The regulations are part of the pleadings, basically say the hair shall be neat and trim, may not touch the collar, the sideburns, may not extend past the exterior opening. Mustaches must be trim, shall not extend over the top of the upper lip or beyond the corners of the mouth; that there are no beards or goatees and hair wigs will not be worn on duty.

Basically, it's our contention it's a violation of their constitutional right. The rules and regulations are unreasonable and under the Court of Appeals' decision, the burden is upon the police commissioner to prove the necescesity of the said rules.

The Court: Would you like to proceed then?

Mr. Sweeney: Yes, your Honor.

The Court: Do you have any statement to make?

Mr. Sweeney: I'll make a brief statement, your Honor.

The sum and substance of the plaintiff's complaint has been that the hair regulation existing in the Suffolk County Police Department was unreasonable in that it doesn't conform to community standards. I intend to show at this time that there has been a modification of that hair regulation which is part of the pleadings making it probably more in line with community standards and is somewhat a different regulation than is before your Honor.

The Court: Is that the test, community standards?

Mr. Sweeney: That is what the plaintiff contends. That is not my contention at this time. My contention is that the police commissioner, part of the general powers and maintaining discipline and in having a uniform regulation among police officers has the power to, just as he has the

power to regulate the fact that policemen may have to wear uniform, wear a badge, the collar, soxs that a policeman has to wear, so too, he can regulate hair lengths. There's a two-prong issue, I suppose. Number one, can the police commissioner regulate hair at all? Number two, if he can, is this particular regulation arbitrary?

The Court: The regulation that I originally passed upon has been modified. Does that moot the whole question or do you want to amend the pleadings somehow?

Mr. Sweeney: That's up to the plaintiff at this time. I was here on the basis of the Circuit Court of Appeals saying that the commissioner had the burden of showing a public need for the regulation. I think I can do so, but, perhaps, I ask counsel if he would stipulate to the new regulation in effect?

The Court: Suppose you mark the new regulation and I'll assume the pleadings are amended to place in issue the question as to whether there is a public need for the regulation and I assume the need is related to the need for discipline.

I don't know whether we're talking about a rational basis or a compelling state interest. I don't know whether that's the same thing as public need. I'm refreshing my recollection in reading the opinion again for the first time since August, 1973.

They talk about a rational continuum, which broadly speaking includes a freedom from all substantial arbitrary impositions and purposeless restraints. In other words, you must show that there is a reason and I say I don't know whether that means a rational basis or compelling state interest as the phrases generally used for many tests to determine the constitutionality of restraints.

Mr. Sweeney: Your Honor, just commenting on the Circuit Court's opinion, while they do say a lot of language, they make one statement at the end of the opinion saying, "We imply no view on the merits." By implication they certainly have said something on the merits, but I indicate to the Court at this time that if we can show that there is a purpose for the regulation, that it's not arbitrary, then—I believe the Circuit Court sent it back because it was poorly decided on afterwards rather than some kind of testimony.

The Court: That's the implication, but I want to know first what the regulation is and what you conceive your burden is. It says here "To establish a genuine public need for the regulation." I assume that the "genuine public need" relates to the need for discipline. I can think of no other public need in the frame work of the issue of this case.

Do you agree, Mr. Wexler? Isn't it all related to discipline?

Mr. Wexler: I don't know. It could be other interests involved. I tried the Long Island Railroad case of hair and there the Long Island Railroad tried to use a safety and health as a state interest. Of course, they failed in that. I don't know what they intend to use as the basis for the interest, whether it's discipline, health, safety, I don't know.

The Court: How long do you think it will take to try this case?

Mr. Sweeney: I have one interest. [Witness]

The Court: That sounds interesting. I just happen to have today. I'm sandwiched in between two jury trials. I'm picking a jury tomorrow. Let's try to finish this today.

Mr. Wexler: We have a problem with respect to the new regulation that was promulgated on November 26, 1973. I don't know whether it's a new regulation in view of the last paragraph. That's the reason I didn't consent to it as a regulation.

The Court: Do you agree that if the old regulation is no longer in effect, that this case, for all purposes mooted.

Minutes of Hearing.

We have no case. I'm not going to determine whether there's a public need for the old regulation if it's not in effect. It's just a fruitless exercise. I've got better use for my time.

Mr. Wexler: Yes, your Honor.

The Court: I must assume what we're talking about is the regulation that is presently in effect.

Mr. Sweeney: The regulation in effect, the deputy commissioner will testify that this is the regulation to modify the other.

The Court: I want Mr. Wexler to say, "We are challenging the regulation in effect." And the pleadings are so amended.

Mr. Wexler: Yes, your Honor.

The Court: So that we have no regulation, no objection about it. Let's mark the new regulation in evidence.

The Clerk: Defendant's Exhibit A for identification received in evidence.

(So marked.)

The Court: Do you want time to go over it?

Mr. Wexler: This is the first time I've seen it.

The Court: I assume you have a thousand copies and you can loan one to Mr. Wexler. We have Xerox copies, marked Defendant's Exhibit A. I have one copy. I return the original copy to the defendant and I have two copies for the plaintiff.

Now, we're all set to go. Please call your first witness.

Mr. Sweeney: I would like to call Deputy Commissioner Robert Rapp.

Robert C. Rapp, called as a witness, having been first duly sworn by the Clerk of the Court, testified as follows:

The Clerk: Full name for the record, please?

Minutes of Hearing.
Robert C. Rapp—Direct.

The Witness: Robert C. Rapp.

Direct Examination by Mr. Sweeney:

Q. Commissioner, by whom are you employed? A. Suffolk County Police Department.

Q. What capacity are you so employed? A. Deputy commissioner.

Q. How long have you been deputy commissioner of the Suffolk County Police? A. Appointed to that position, July 2nd, 1973. Approximately nine months ago.

Q. What was your occupation prior to being employed as deputy commissioner? A. I was an assistant district attorney in and for the County of Suffolk for a period of six years.

Q. Prior to that appointment, what was your employment? A. Nine years I was employed by the New York [City] Safety Police Department.

Q. In what capacity? A. Patrolman and sergeant.

Q. In your duties as deputy commissioner, are you familiar with the rules and regulations of the Suffolk County Police Department? A. Yes, I am.

Q. If I show you a copy of them, can you identify them for me?

(Handing to witness.)

Mr. Wexler: I'll concede them, your Honor.

The Court: Let them be marked.

The Clerk: Defendant's Exhibit B for identification received in evidence.

(So marked.)

The Court: Are these originals?

Mr. Sweeney: Certified copy.

The Court: There'll be deemed marked if you prefer.

Mr. Sweeney: This is my copy. They have many originals.

The Court: The specific pages referred to will be marked with a number B1, B2 and so forth.

Q. Commissioner, I refer you to page 16. Could you tell me if that's the grooming regulation that was in effect prior to November of 1973? A. Yes, it was. Section 2.16, Sub-Divisions A-3-E, the grooming regulation.

Q. Does that in sum and substance involve the regulation of the length of hair of patrolmen? A. Yes, it is.

Mr. Sweeney: Did you wish to mark the page, your Honor?

The Court: Mark the page referred to.

The Clerk: Page 16 so marked.

(So marked.)

Q. Mr. Rapp, I show you Defendant's Exhibit A (handing to witness). Is that a modification of the grooming standard as exists in this book? A. Yes, it is, sir.

Q. Would you previously describe to the Court what the modification is? A. Section S. Chapter 2, Paragraph 2.16, Rules and Procedures of the Suffolk County Police Department, Sub-Divisions A, B and C were amended. Sub-Section A was amended to permit hair to extend down and touch the collar at the back of the neck. This amendment was made in an effort to recognize the fact that men's hair styles have changed in the past few years. Sub-Section A also prohibits ponytails and it also prohibits length of hair that will interfere with the proper wearing of helmets or authorized uniform head gear.

The Court: In amending the regulations, was an opportunity offered to the members of the police

department or other sections of the public to challenge the regulations or offer proof that they weren't needed or required or that they were not consistent or in line with the local community styles?

The Witness: These regulations, the amendments thereto, Sub-Sections A, B and C were arrived at after a series of meetings between myself and President Johnson, Edward Johnson of the Suffolk County PBA. He and I discussed the matter at some length and basically, the amendments that the Court has in Defendant's Exhibit A is a result of an agreement entered into between he and I which presumably would meet with the approval of the membership as well as give the Suffolk County Police Department some means to control the appearance of Suffolk County police officers.

The Court: Who is Thomas Dwen, the president?

The Witness: The original plaintiff was the president of the PBA at the time the suit was instituted. He was in the reelection. Patrolman Johnson was. I dealt with him as the present president of the Suffolk County PBA.

The Court: So there wasn't any public hearing or hearing that gave anyone else the opportunity; this was arrived at in confidence as between you and the present president?

The Witness: Largely as a result of the decision of the Second Circuit which sent it back for this hearing or evidentiary hearing, was the feeling of Commissioner Kelly we should sit down with the PBA and see what exactly they wanted or what were looking for in connection with this suit. As I say, Paragraphs A, B and C are the result of those conferences I had with Mr. Johnson.

Q. Mr. Rapp, I show you a drawing (handing to witness). Would you—

The Court: Do you represent the PBA at this point in the proceeding?

Mr. Wexler: Yes, your Honor. I was waiting for cross-examination before I would say anything.

The Court: Proceed.

Q. Is that particular drawing a regulation of the Suffolk County Police Department? A. This particular drawing was made at my request and it's an attempt to depict what is said in words in the regulations. It's an attempt to depict it in a picture so that it's more understandable to both the patrolman and the supervisors who have to enforce the regulation.

Q. That picture was circulated to the members of the Suffolk County Police Department and they wore their hair as that picture is depicted, they would not be in violation of the regulation? A. That's correct, sir.

Mr. Sweeney: I would like to offer that picture into evidence at this time.

Mr. Wexler: No objection.

The Clerk: Defendant's Exhibit C for identification received in evidence.

(So marked.)

Q. As to the grooming standard or hair regulation as it exists today, could you state for the Court what are the general reasons why the Suffolk County Police Department has such regulations? A. One reason for the present regulations and, again, recognizing the changing of men's hair styles lately and the fact that most of our men in the department, the vast majority are under the age of thirty,

the compelling reason for hair regulations at all is one of safety. We have approximately 2,600 police officers in Suffolk County. 80% of our patrol force drive one-man units. We have a series of regulations concerning safety, specifications for police cars, specifications are arrived at to give the police officer the safest vehicle to drive in. We test weapons to make sure the police officers are equipped with a weapon that will not fail in time of need. We equip them with mace, a chemical device to cause discomfort—

Mr. Wexler: I don't want to interrupt, but I don't see the firing of guns and the carrying of mace as germane to the issue.

The Court: I'll allow it only because it might tend to show the care with which the department exercises in safety and other areas and it may relate to some safety requirement in hairdress. I can see it coming, but I want to see if it does.

Mr. Wexler: Your Honor, I see why I said at the beginning I didn't know what route they would take. I said possible safety and that's what they're using.

The Court: At this point I can't see it, but I'll allow it.

Mr. Rapp, I had missed to this point the connection, but it may be developed so I'll listen to that.

The Witness: I'll make the connection now if I may.

A. In the opinion of the Suffolk County Police Department, long hair possesses a safety problem to an officer attempting to make an arrest. When I was a rookie police officer in the Safety of New York, we were taught how to take a man off his feet by pulling on his hair and if I may demonstrate to the Court with my hands, you grab a man

by the hair of the back of his head and rib straight down, you can take that man off his feet in a matter of seconds. His body has got to follow his hair.

The Court: Would you like to demonstrate on our reporter who won't pass the test? Would you mind, Mr. Silverman?

(Demonstration in Court.)

The Court: Repeat for the record what you just did to the reporter.

The Witness: I placed my hand at the rear of the reporter's head and I grasped all the hair I could in my fingers. I held my forearm touching the spine of the reporter and demonstrated to the Court that a straight down pull—

The Court: That's why you got the leverage, touching the spine?

The Witness: Right.

The Court: You grabbed the main—you don't mind, Mr. Silverman—and pulled down forcefully. You say that would knock the individual over?

The Witness: That's right, his body would have to follow the pull of hair, whichever direction you took.

Mr. Wexler: For the record, your Honor, may I point out in grabbing the hair, he grabbed that portion of the hair which was above the collar in his demonstration.

The Court: I think so. Don't be so satisfied in making your point. I imagine even that hair has to stop some place and the lower it is the easier it is to grasp. I imagine even a crew cut would make it almost impossible.

Mr. Wexler: A baldy would be almost better.

The Court: That would be one of my questions, whether this witness would suggest we shave every policeman's head in Yul Brynner fashion.

The Witness: I don't for a minute suggest that. I merely say that an effort to provide for the safety of our officers, we have to have the right to control the length of hair.

The Court: That's the one place where safety is a factor. You say that it eliminates the danger of an offender or individual grabbing the hair and rendering the officer defenseless?

The Witness: That's correct, sir.

The Court: That would refer only to the length of the hair in the back, have nothing to do with sideburns, beards, mustaches; my correct, there, nothing that could happen?

Mr. Sweeney: I would like to indicate to the Court in effect there is no regulation as to mustaches at this time.

The Court: How about beards?

Mr. Sweeney: There is a regulation as to beards, not mustaches.

The Court: But that safety precaution would not refer to beards, would it?

The Witness: I would say it would.

The Court: It would?

The Witness: Yes, by the same token if you can grab a man by the back of the head by his hair, if he had a beard, you can grab him by the beard and make him go almost any way you want to go merely by hanging on with sufficient strength.

Q. Commissioner, you were stating to the Court the general reasons for the regulation. Is safety the only reason? A. No, an additional reason is the appearance, the general

appearance of a police officer. A police officer is a public servant. He wears a uniform that has come to be recognized as a police officer's uniform.

Q. In line with that uniform, I would just like to show you page 35 of Defendant's Exhibit B. I ask you if that relates to uniform regulations as to uniforms?

(Handing to witness.)

A. Yes, sir, it does.

Q. Would you go on as far as neatness or appearance is concerned? A. Unlike some other police departments, Suffolk County does not require a police officer to purchase his own uniforms. Any police officer assigned to our police department is given his uniforms. When they wear out he's given new uniforms. We do this in an effort to maintain an appearance throughout the department of neatness. It makes for high morale when you look good, you feel good. When you feel good, you do a good job.

Q. Do you regulate the color of the uniform? A. Yes, we do.

Q. Do you regulate the color shoes? A. Yes, we do.

Q. How about soxs, what kind of soxes? A. We regulate the color of soxs. They have to be black.

Q. Do you regulate—

The Court: White shirt?

The Witness: No, sir, blue shirt up to the rank of—lieutenants wear white shirts with a blue uniform. Sergeant and patrolman wear blue shirts with a blue uniform.

The Court: Is the blue a particular tint or lightness?

The Witness: Standard issue blue similar to the two officers who are present in Court, your Honor.

The Court: Thank you.

Q. Do you also regulate hats? A. Yes.

Q. Is the hat a part of the uniform? A. Yes.

Q. Is a patrolman required to wear a hat while on duty? A. Yes, he is.

Q. What type of hat is that? A. The standard eight point police hat.

Q. Is the patrolman required to wear that hat at all times or are there occasions when he does not have to wear it? A. The department does not require an officer to wear his hat while in the car, his radio unit. When he exits the vehicle, he has to put it on.

The Court: Has any survey been made in the community or maybe outside the community as to public reaction or acceptance of deviations from uniform policy? In other words, are police departments which permit individualism in communities held up to ridicule in any way? Does the public lose respect for the force in any way?

The Witness: I don't know of any formal survey that would indicate that one way or the other. I have heard remarks from various sources as to members of the public commenting on hair. I have heard it from members of our own department, patrolmen themselves.

Q. In your opinion, Commissioner Rapp, would there be an indication where the length of hair of a patrolman could interfere with his duties? A. Aside from the obvious problem while trying to effect an arrest, I can conceive of hair length that would interfere with his operating of a police vehicle during a pursuit chase. If his hat is not on and he's driving at a sufficient speed and his hair is long enough, I can see it blowing in his eyes.

Minutes of Hearing.
Robert C. Rapp—Direct.

Q. Does the Suffolk County Police Department have various public relations programs as to the functions of the police department in general? A. Yes, we do. We have a Community Relations Bureau.

Q. Do you send patrolmen or uniformed officers around to various civic groups or high schools representing the police department? A. Yes, we do. We have a Regulation Speakers Bureau that handles most of those assignments.

Q. What's the purpose of that type of public relations? A. Basically, it's to get the closer rapport between the community and the police department. We find that when a community understands what we're trying to do and the resources that we have available to do it, that they understand our problems and we on the other hand have the opportunity to hear their problems and it makes for a better relationship.

Q. Is it essential for the functioning of the Suffolk County Police Department that the community in general have respect for the police department? A. I would say definitely, sir.

Q. What would you say is the role of the uniform patrolman as an example of the Suffolk County Police Department? A. The uniform patrolman is the first line. He has the first contact generally with any member of the public, whether it's a traffic stop or a routine check or responding to a call for assistance. The patrolman on the street or in the car is the first one observed, generally by any member of the public.

The Court: How many members do you have in the Suffolk County Police Department?

The Witness: We have 2,600 sworn officers. It's approximately the fourth largest in the State of New York.

Minutes of Hearing.
Robert C. Rapp—Direct.

Q. Is the reason for this regulation as to this blue uniform, the badge, perhaps even the revolver so that the public can identify who is a patrolman and who is not? A. Not only the public, but would-be perpetrators of criminal acts. The purpose of the uniform is to let them know the uniform is there. It's a prevention method of preventing crime.

Q. Would you say that the regulation as it now exists is part and parcel to your regulation of the color of their socks as being part of their uniform? A. Yes, sir.

Q. Does this particular regulation relate only to male personnel of the Suffolk County Police Department? A. That's correct, sir.

Q. How many female personnel are in Suffolk County Police Department? A. Presently employ 13 females.

Q. This regulation has no effect as to females? A. No, it does not, sir.

Q. Did you anticipate at some time that if in fact—withdrawn.

Are any of these females assigned to active patrol duty in a car as other patrolmen would be? A. No, sir.

Q. Do you anticipate at sometimes, perhaps you might each have to regulate the length of a female's hair if she was in this same category as on patrol duty?

The Court: Counselor is not objecting. It has nothing to do with the case. I have enough problems.

Mr. Wexler: I wasn't asking objection because I was asking that.

Mr. Sweeney: I was anticipating Mr. Wexler asking that.

The Court: You say it's discriminatory if you don't have females.

Mr. Wexler: One of the factors is safety. It only

applies to men and Suffolk County does intend to have females in the automobiles.

The Court: It's already been testified to they have different duties. They don't encounter muggers and—

Mr. Wexler: There is a pilot plan in effect to place women in the cars and, therefore, it becomes an issue what do they intend to do.

The Court: What they intend to do, I don't think that's important.

Mr. Sweeney: I brought it out only for the reason I anticipated Mr. Wexler making that argument. This regulation concerns specifically male personnel.

The Court: I agree. If you have women doing same same type of work, subject to the same hazards, that were described by Mr. Rapp, I would be inclined to agree that that would be power material encountering the position of the police department in which it says it's a safety measure, but it isn't, as far as I know, it isn't part of the female police department's work, the female branch of the police department.

Mr. Sweeney: I have no further questions at this time, your Honor.

Cross Examination by Mr. Wexler:

Q. Commissioner Rapp, didn't you have policewomen riding in patrol cars? A. Yes.

Q. Commissioner, were they riding when this new hair regulation was in effect? A. Yes, they were.

Q. Did the hair regulation apply to females riding in patrol cars? A. No, not at that time. No, sir.

Q. Not at that time, does it apply to them now? A. No.

Q. Do you have females walking patrol? A. On a temporary experimental basis.

Q. Does the hair regulation apply to them? A. No.

Q. Are they subject to great hazards or endanger because they have longer hair than the hair regulations? A. I would say they are.

Q. Do you plan to protect the females by having them follow the same rules and regulations as the men? A. I wouldn't say the same rules, but I do think we will promulgate rules, yes.

Q. So you do anticipate having rules affecting females who will be in patrol cars and roaming the streets? A. Yes, sir.

The Court: How extensive or how long has the experiment been going on?

The Witness: We put each of the 13—12 of the 13 policewomen were put in police units for two weeks.

The Court: Has that period expired?

The Witness: Yes, it has. We ran that sometime during the Summer.

The Court: There are no policewomen that are on duty in patrol cars at the present time?

The Witness: That's correct.

The Court: You're saying that the experiment had occurred before you promulgated the amended rule?

The Witness: Yes, I believe it did.

The Court: You said it was the Summertime. This happened in November.

The Witness: That's correct, sir.

Q. Do you have patrol women walking patrol? A. Not at the present time, no, sir.

Q. Were they walking patrol when the new hair regulations went into effect? A. I don't believe so, sir.

Q. How many uniform men are there in the Suffolk County Police Department? A. Approximately 2,600, sir.
Q. Uniform? A. Uniform?
Q. Approximately? A. Patrolmen?
Q. No, uniform men.

The Court: I imagine even that excludes the undercover.

A. 2,000, 2,100.
Q. Of the 500 detectives, how many of them are undercover or narcotics which wear, are permitted and I understand have different regulations because of the nature of the job? I'm interested in those, the rule would affect as detectives who do not wear uniforms.

The Court: Let's understand whether the rule is applicable to other than uniform men, the 2,000, 2,100?

A. Yes, sir, the rule is applicable, however, a detective can request in writing to be exempt from the hair regulations. That request, however, must show a justification of the assignment and why he feels departure from the regulation will assist him in performing that assignment.
A Mr. Wexler mentioned there are narcotics detectives, but there are others who are given an exemption based on the type of work they're doing.

The Court: Any given exemption for personal reasons?
The Witnes: (No response.)
The Court: A detective might be a member of an amateur rock and roll band and feel that he would like his hairdo to be atypical.

The Witness: I don't know of any exemptions based on that. Nor do I know of any requests based on a personal.
The Court: The ones that want to look like father and son.
The Witness: We haven't had requests for those reasons.

Q. Commissioner, so I understand, the new regulation dated the 26th of November, '73, does that supersede the old regulation? A. If you take that regulation of November and replace paragraphs A, B and C, and continue reading the rest of the regulation, that in total is the grooming standards of the department. I understand it's Sub-Section D, E and F, they're still in effect.
Q. So we have some clarification. The reason I'm confused, the 2 regulation, 2-2.16 A, B and C. Under the old regulation, it's 2-75.1, .2, .3, .4, .5. I'm confused. A. When the November, '73 order came out it amended those pages in Defendant's Exhibit B. I had no reference to this at the time I made the amendments.
Q. Could you tell us, based upon the old or the new, what's the hair regulation as of today? A. The present regulations are from Defendant's Exhibit B, the November order amends this section (Indicating). Section A, B, C, D is still in effect and E is still in effect. I had no reference to this at all. I didn't consut with this. I went to the rules and amended Sections A, B and C.
Q. Commissioner, getting back to my question, how many detectives are affected by this rule and regulation who are not exempt for one reason or another? By "detectives" we mean, those who wear ordinary clothes not provided by the county. A. Perhaps 250.
Q. Do those regulations affect the 250 who are not in uniform, but in street clothes? A. Yes, sir.

Q. Regulation, the new regulation, Paragraph A, second sentence, "Hair will not go below the ears or the collar." Does that mean hair can go over the ear or behind the ear? What does that mean? A. By that, I meant and I believe President Johnson meant that hair—

Q. I'm interested in what you meant? A. I meant that hair would go behind the ear and not over the ear.

Q. If hair came out from a wind or so forth over the ear, is that in violation? A. Not if caused by wind, sir, no.

Q. Assuming it was caused by wind, but the patrolman never pushed it back, is he in violation? A. Technically, I suppose he would be.

Q. So the violation becomes now how long it takes him to get his hair back if it accidentally comes back?

Mr. Sweeney: Objection.
The Court: Overruled. I'll allow it.

A. No, sir.

Q. Do you feel that the hair going over the ear is a safety hazard? A. The question is one of agree. How far over the ear, below the ear? Does it go to the collar? Does it touch your shoulder? Hair over the ear can stop here (indicating). The middle of the ear, the bottom? Can it stop at the collar, the shoulder? The problem is one of definition.

The Court: Two patrolmen stand up.

Q. I show you two patrolmen whom you know. You see their hair over their ears. Do you feel that's a safety hazard to the two patrolmen whom you know? A. As they presently have it?

Q. Yes. A. Might I suggest they be given some description in the record what's the hair I'm looking at before I answer the question, sir.

The Court: Surely.

Q. We'll start with Officer Nordt.

The Witness: May I do the description?
The Court: Surely.
The Witness: I know Officer Nordt's hair extends over his ear, but I can see his ear lobe. Patrolman Brady, I know hair is on top of the ear and extending not less than halfway down the ear. With that view in mind, I would say no, Mr. Wexler, that's not a safety problem.

Q. So hair touching or going over the ear as described by yourself and the two patrolmen is not a safety hazard? A. That's correct.

The Court: Is it a violation of the present regulation?
The Witness: Yes, it is, sir. Might I explain how we arrived at that particular regulation? Would the Court be interested?
The Court: Just answer the questions.

Q. If sideburns went one inch below the bottom of the ear, would that be a safety hazard? A. No.

Q. If someone had sideburns one inch below the bottom of the ear, would he be in violation of your rules and regulations? A. Yes, he would.

Q. You told us that most of the men in the Suffolk County Police Department are under thirty; is that correct? A. Yes, sir.

Q. In the community, sideburns going one inch below the ear, to the general public, is that acceptable, does it seem to you? A. Yes.

The Court: Well, this witness is giving wide discretion in expressing opinions. I don't know what it's based on.

Mr. Wexler: I didn't know either when he did.

The Court: I say most surveys—I don't know how many people the commissioner has talked to. I don't know how long he's living in the community, what community he's talking about. Certainly, public rejection on hair styles by a vast majority of the people could bring the department disrepute. If policemen, for example, were allowed to go unshaven for three or four days and walked around in a rumpled uniform, open collars, appear to be in total disarray, you can imagine that the public would soon lose respect for it.

Now, how far do you go? When does the public react? When policemen in New York first took their jackets off and were allowed to walk the streets in the Summer heat in their shirts, I don't quite remember if it was a half sleeve shirt—there was a reaction by the public and it may have taken days or weeks before they accepted it. Now, once they accepted it it was all right, but it had to be uniform, it had to be neat. That's the trouble with your questions, as to whether the hair below the ear—now the two policemen that stood up are neat. They appear to be well groomed. I can't see why the public won't accept hair styles of this kind. It is not a safety hazard, but then the regulations have to draw a line and no matter where you draw it, you can take it

because you can show by example that there's no reasonable basis for the borderline case. It's like deciding a close case in Court. No matter where you draw the line you can find a case that's so close that would result in a hardship or even an injustice. That's the problem with these things, regulations. Every time you draw a line, there's someone who can show that there's no basis for it.

I think the test is whether in the main, not that there might not be an exception, not that there might be an individual hardship, but for the entire police department, for the public as a whole, is there a need? You know when we talk about sideburns, we talk about how bushy they are. We talk about beards, of course beards in and of themselves are unacceptable. No one complained about Charles Evans Hughes when he was chief justice. Would they if he were a policeman? Maybe not. Would it be a safety hazard? I'm not sure. So when you're talking about personal grooming you and I know that someone can comply with these rulings and look very sloppy, unacceptable. Does that mean the one who complied will not bring dishonor to the department while one that does not will? No, I don't think so. You take individual cases. I think it's difficult to make an argument one way or the other on individual cases. That's why I'm asking these gentlemen to stand up. It goes to prove these gentlemen, even in violation of these regulations, are well groomed. I don't think they present a danger to themselves, but I don't know where the argument leads.

Mr. Wexler: I think—and though I'm not a believer in long hair and I'll state that on the record. I don't believe in ponytails, but I think it logically

leaves to leave it alone and it will seek its own level.

The Court: My personal attitude? We had a Court Reporter that had a ponytail. One judge literally threw him out of the Courtroom. He came to me and asked whether I had objection. I said not at all. I had law clerks and I interviewed a law clerk and I asked my then law clerk if he should shave the beard before he came for an interview. I said not at all. I've had law clerks with beards. Well, this is the first one—of course, I have a female law clerk. I had personnel ask whether there was any objection to coming to Court, females coming to Court in slacks. No. I want people to dress and act as they want to as long as it doesn't impinge on anyone else's freedom and it doesn't in any way impair the effectivenes of the force. That's the real question. That's why it's interesting to have surveys to see public reaction. It may very well show people don't mind. Some people react violently. Some don't care. For myself, as I recall it, I thought of the—I don't know whether I said it in my opinion because I haven't read it since I originally wrote it —uniform to me means uniform. Now, absolutely uniform? Nothing is ever an absolute performance and acceptance. So that the public sees a man in uniform and recognizes him as a physical representative of government, one that they can respect and look up to, I think that's important. It may sound old-fashioned. I think the policeman serves a very important purpose in our society, maybe more so now than ever.

Mr. Wexler: Don't we want him to be a part of society?

The Court: That's right, that too.

Mr. Wexler: I agree he should be neat, have a uniform, be clean. Is he supposed to be the military type hair or can he be with society?

The Court: Now we come to the very close questions. Where does it interfere with his personal right? Where does it affect the public and where does it affect his effectiveness? Now we come to these borderline cases. That's what I'm talking about. I won't have an easy time of it.

Mr. Wexler: That's the reason I pointed out, most of the men are under thirty.

The Court: Frankly, I felt it was that policemen were more subject to these uniform regulations than the military, for this reason that they had a choice before they entered the force of becoming a uniform law enforcement officer or not. The fellow drafting into the army, he has no choice. He's told. You say to a policeman, "Look. These are the regulations, do this, do that." If you want to accept the appointment, you comply. The Court of Appeals in its infinite wisdom disagrees. They say no, they're not a "[Para] parallel military force." They have jobs as civil service employees. I must accept that until the Supreme Court says, "No, they are in a sense a [Para-military] parallel organization."

You can continue with your examination.

Mr. Wexler: I will be very brief.

The Court: I don't want to cut you off. I may bring something up that might be helpful.

Mr. Wexler: I think we're wasting words. I think the Court knows the issue.

The Court: Do you know of any surveys?

Mr. Wexler: None.

The Court: That show public reaction?

Mr. Wexler: None.

The Court: Sampling?

Mr. Wexler: None. I don't think there are any.

The Court: Then it must be wasted on my impressions which aren't right either. How would I react? I don't know at this point how I would react. Again, it's almost what the extent is. The sideburns, are they so bushy even though they're not long, that they're seeming to be unruly and difficult to manage? When he walks down the street, is some citizen of advanced age or some youngster that passes by say, "My God, thy're getting to look like the out crowd or the in crowd." Or will they just say—or not even recognize the difference?

How many of the people out there, how many in number have hair beyond, lower than their ears and bushier and hair below the neck? So that it doesn't even make a difference. I assume that if you had policemen that had rings through their nose, you would say, "Well, that department can legislate on," but if everybody out on the Island started wearing rings in their nose, "That's all right. There's nothing wrong with that." Trying to regulate anyone's personal conduct is difficult, at best. No question about it. We've learned that in the obscenity laws. We've got a tiger by the tail in my humble opinion. I enforce it. I see it enforced because I try to interpret the law. My own personal view would be entirely different. As long as young children are protected, as long as people are not offended. If all it means that those who pay their fee, see what they want to see, personally, that's all right with me. Again, it's an area in which the legislator and the Court have tried to limit someone's personal freedom. It's

difficult. Here, it's in a different respect, but we have the same problem.

I can see an effort by police department and at least some of the officers to try to work out a regulation, but you're never going to get one that pleases everybody. There's going to be one fellow who likes a ponytail. You don't like. Why shouldn't he have it?

Mr. Wexler: I agree. This is right.

The Court: But if the community out there holds the man up to ridicule and if it reflects upon the department and the effectiveness of people, people won't respect him and I'm not talking about 100% of the people substantial majority, it may very well be a proper area for regulation.

Mr. Wexler: There isn't sufficient—

The Court: Why should an officer have to have a uniform? Suppose one of the officers sitting before me decided that he would like red striped pants?

Mr. Wexler: There they can make out an easy good case.

The Court: Why? To identify the policeman?

Mr. Wexler: Yes.

The Court: You know that's an excuse. You can identify the policemen. If enough didn't wear uniform pants but enough wore a uniform jacket, they'd be identifiable. Look how easily people are identified on a basketball court in quick movement. Nobody has to have the complete uniform—skin is showing—you see white and the red of the other. You know that. Identifiable? That still doesn't matter. You know in the movies when you see the marshals out west, they don't have uniforms. They just have a shield, six point shield and he doesn't have to say, "I'm Marshal Dillon" before he an-

nounces who he is. You've seen that shield. He's identified, right? Well, it might very well be a safety measur because if you require reaction, it may very well be the more identifiable uniformity you have the better you identify it. At dawn or thick of the night, it may be that a full uniform is better. I say it's really a matter of agree [degree]. How far do you go? When do you trespass on someone's personal freedom and when is it, as the Court of Appeals said, a regulation that's a public interest or a public need? I don't know how much of this can be left to the discretion of the enforcement authorities, the disciplinary authorities in the department. That may or not be related to this. They showed pictures of what you may or may not have. You indicated there's a technical violation if somebody's hair goes over the ears. I think that that was a very strict interpretation of the regulations. I think that if the hair could reasonably be groomed to conform to the regulations, that would be enough. I don't think it has to conform during sleeping hours or those temporary moments when the grooming is upset. If the hair is so cut that it can conform to me, that would be a reasonable interpretation and that's it. The mere fact it falls over the ears would not be a violation. I'd be ready to entertain a writ of mandamus if anybody discharged anybody for the moment the hair fell over or even that way for an hour or even that way for ten hours or eight hours while he slept. You may continue. I may suggest if anyone is ready to make any kind of a survey, if you think it's relevant, and it's not too expensive, if you want to do some research and find whether community reaction or evidence of taste is available.

Mr. Wexler: I'll defer to them since they have the burden of proof. You probably have the money, though.

Your Honor, I want to bring up the point concerning the agreement, the alleged agreement between the president of the PBA and the police commissioner.

Q. Police Commissioner—

The Court: Incidentally, I don't think that because the commissioner came to agreement with the PBA that that means that everyone is bound by it, and it meets constitutional standards.

Mr. Wexler: I wanted to point out—

The Court: You can go into it.

Q. This is an agreement for a period of six months; isn't that correct? A. Initially, yes, sir.

Q. There came a time when your department issued two [photographs] paragraphs showing what the hair regulation would be; is that correct? A. Yes, sir.

Q. And it wasn't that which was offered in Exhibit C, but another photograph? A. That's correct, sir.

Q. Which was really not in compliance or following the regulation that you and the president temporarily agreed to? A. That's correct.

Q. When that picture was shown around to the members of the department, there was a reaction to that, wasn't there? A. I understand there was, sir, yes.

Q. The membership said they could not go along with it anymore; is that correct? A. (No response.)

Q. Anyway, you were advised? A. I don't know what the membership said, sir.

Q. You were advised the six-month trial period had

fallen apart because of the picture sent out by the police commissioner's office? A. No, sir, I was not told that.

Q. But you were told the agreement is off; isn't that correct? A. No, I wasn't. What I was told was that the PBA had voted to continue the suit. That's what I was told.

Q. That they were not—within the six-month period, they have not agreed to go along with the temporary agreement? A. That's correct.

Q. It was the understanding that the originate of the agreement would be a trial period for six months and each party can declare it null and void and continue with the lawsuit if they want? A. That's my understanding.

Q. So there was no final agreement—one other thing, police commissioner, men walking the streets and patroling have to wear their hats, don't they? A. Yes, sir.

Q. When hats are on securely, hair cannot blow in the eyes? A. I would say that's correct, sir.

Q. When you refer to the example that you can pull someone's beard in pulling him down, can't you pull a tie just as readily in pulling him down? A. That's true.

Q. You can pull any portion of clothing just as readily? A. Well, I wouldn't say any portion of the clothing, but portions of the clothing could be grabbed, yes, sir.

Mr. Wexler: No further questions.

Redirect Examination by Mr. Sweeney:

Q. Commissioner, could you just briefly state why the regulation affects those some odd 250 detectives who have been requested or have a special assignment allowing them to have longer hair? A. Why the rule applies to them?

Q. Yes. A. These are our general service qualified detectives who meet and deal with the public daily. They are people that, detectives that meet people who come in to complain their house was burglarized. They have a more public oriented type of job where the other men are doing undercover type assignments.

Q. Is a detective a different rank from a patrolman for example? A. Civil service wise, a detective is a patrolman, but he is a patrolman detailed at the discretion of the police commissioner.

Q. At the discretion of the commissioner, could the detective be told to be in uniform? A. Would take even less than that.

Q. Is he required to keep a uniform? A. Yes, he is.

Q. There's one issued to him? A. Yes.

Q. That's all of those 250 or all detectives? A. Yes, sir.

Q. Looking at these two officers, would you say in your opinion as the police commissioner, that they would be subject to discipline as a result of their hair length that you see today? A. Probably not.

Q. Would you say their hair length are in substantial conformity with the regulation? A. Substantially, yes.

Recross Examination by Mr. Wexler:

Q. Their hair length is in substantial conformity with the order? A. With the exception of the hair over the ears.

Q. We're talking about hair over the ear. A. What do you mean by "substantial"?

Q. All right, are they in violation, considering their length of hair and their ears? A. Technically speaking, yes.

Q. Could a superior officer charge them with a violation of the rules and regulations and be placed on trial in disciplinary proceedings? A. Yes, they could.

Q. Even though they're not a safety hazard or any other hazard as far as you're concerned? A. That's correct.

Q. Just because the commissioner doesn't like the way they style their hair? A. No, sir. Because the commissioner has got to have a limit. The supervisor has got to know how low that hair can go. You cannot have a regulation that patrolmen shall be neat and let it stop there. If you find that a patrolman that everybody agrees would be unneat and you charged him, I doubt the constitutionality of any disciplinary action. A patrolman must have standards that he must know he has to conform to before he can be guilty of any regulation.

The Court: Is any disciplinary proceeding pending against either of these two patrolmen?

The Witness: As of right now, no disciplinary proceeding pending against any patrolman on hair regulation.

Q. On the hair regulation because of this temporary agreement we've had on seeing if we can work it out? A. Not necessarily, sir. I didn't tell the supervisors they could not enforce that regulation.

Q. Didn't you tell the supervisors to "Go soft on hair, we're trying to work it out. Let's not shake the boat"? A. Not in those words.

Q. Not in those words, but words and substance, the same saying, "Don't rock the boat while we're trying to work something out." Withdrawn.

Didn't we have hair disciplinary actions in the past before the agreement? A. Yes, sir.

The Court: When was the agreement terminated?

The Witness: As far as the Suffolk County Police Department, sir, it has not terminated. That's the regulation still in force and effect.

The Court: I'm talking about the understanding that you would not institute disciplinary actions for violations.

The Witness: That was never my agreement, sir. I never agreed not to institute disciplinary actions against a patrolman in violation of the new November regulations. I never agreed to that.

The Court: None were instituted since November?

The Witness: That's correct, sir.

Q. We have many hair disciplinary cases before, didn't we? A. Prior to July, Mr. Wexler, I couldn't comment. I don't know how many you did have.

Q. You know of one case where a police officer quit the job because he was in violation and refused to conform? A. Yes, I do.

Mr. Wexler: Nothing further.

The Court: Anything further.

Mr. Sweeney: No.

The Court: You may step down. Thank you.

(Witness excused.)

Mr. Wexler: I'm not going to call any witnesses.

The Court: You rest on this?

Mr. Wexler: I'll rest on the testimony. I think the Court knows the issue better than I do.

The Court: Do you have any reported cases of similar regulations upheld?

Mr. Sweeney: Yes, I do, your Honor. I have a case which I would rely on heavily because it concerned the Nassau County PBA, and exact regulation to the old regulation in this case.

The Court: Do you have a brief?

Mr. Sweeney: I have a copy. The brief I submitted in the Circuit Court of Appeals.

Mr. Wexler: That was before the Circuit Court of Appeals he's relying on.

The Court: Does that recite the case in question?

Mr. Sweeney: Greenwald against Frank.

The Court: You say that's a Nassau County case?

Mr. Sweeney: Yes. The lower Court decision was 70 Miscellaneous Section 632, 334, New York Sub-Section 680, affirmed as modified, Appellate Division 337, New York Sub-Section 225, and that case was affirmed on June 1, 1973, by the Court of Appeals of the State of New York, affirmed unanimously, no opinion. I don't have the Court of Appeals' citation. That was the case held.

The Court: Was that discussed in the Court of Appeals?

Mr. Sweeney: Certainly was, your Honor.

The Court: I have a slim opinion. Where did the Court of Appeals referred—I see it. Who decided that case in Nassau County?

Mr. Sweeney: Justice Bernard F. McCaffrey. He wrote an opinion. I was going to quote from that, but if your Honor is going to read it, there's no necessity.

The Court: That came out of the Supreme Court, Nassau County?

Mr. Sweeney: That's correct. It's the exact same situation. It's the PBA suing—identical to this case. If I just may read the Appellate Division's opinion? May I your Honor?

The Court: Surely. "The rational of the modest regulation in question concerning personal appearance setting forth rules as to haircuts, sideburns, mustaches and beards is that there should be neatness and discipline in a large quasi military organization such as the Nassau County Police Department so that the general public will have

respect for the members of the department. In our opinion, this regulation does not raise issues which rise to the dignity of constitutional questions."

I would submit to the Court that the Circuit Court of Appeals while saying, "We make no view on the merits," is merely saying that there are situations where perhaps the regulation of hair would raise a constitutional question. I think that's the sum and substance of their sending it back and saying, "Have a hearing on it, or at least a trial as to what are the reasons because we don't have enough reasons before us."

There was a case before the Supreme Court involving the regulation of hair in public schools. That case was Karr against Schmidt, 401-US-1201. Justice Black, writing in that case, says the impression given the Courts today about the length of hair. I quote on page—this is from the Supreme Court, any one Supreme Court, page 593. "The hair issue has created or is about to create a national crisis. I confess my inability to understand how anyone who does classify this hair length case. The only thing about it that borders on the serious to me is the idea that anyone should think that the Federal Constitution imposes on the United States' Courts the burden of supervising the length of hair that public school students should wear." This case does not involve public school students. I think that's a civilian category. There are many cases on it, but just as analogy, is this Court—are we to be back here in six months from now? In other words, if this regulation is not rational or it has no rational basis, there are two issues. Number one, can the police commissioner regulate hair length at all as part and parcel of neatness, appearance, safety, the fact of maintaining some discipline in a police department? Sure there's going to be exceptions. There's bound to be. I suppose that's why they have hearings. If somebody was—a charge leveled against them, perhaps even in this case, perhaps

hair a little over the ear, maybe that isn't unreasonable or maybe when it's before one of the powers of the deputy commissioner, to sit and hear cases to say, "That isn't what the regulation is all about. When we go to". When we go to Court to test the statute, they say that's not the intent. The intent of his regulation is to have some kind of conformity in appearance, a general conformity. You can knit-pick at this regulation. As a matter of fact, I'm sure if next week the Suffolk County Police Department says we're going to issue everybody white socks, well, I'm sure the law enforcement will probably still be the same. The question is, as your Honor has pointed out, that about the fellow who comes in unshaven or the hair all over the place. It's to keep some kind of a general rule. There's going to always be an exception. At issue here is just the right of the commissioner to regulate.

The Court: We're almost on a collision course with the possibility of a challenge to vagueness. Even a statute that says, the regulation that says, "neat," what does that mean? Its a variable standard. I am trying to think of instances where, instances in my life or your life for a long period of time you've seen someone—he never looked neat. He can go out and buy a $300.00 suit, come out of the barber, have just taken a bath, have the newest clothes and still, for some reason, to you, look dirty. These individual tests are difficult to regulate. Can the commissioner promulgate rules that are so vague as to put officers in jeopardy of their jobs by failure to adhere to a vague regulation? This at least makes an attempt to specify and in making an attempt to specify, leaves open the possibility of objection, as I say, close cases. Neat and still in violation. Safe, but still in violation. That's the problem.

Mr. Sweeney: Perhaps, your Honor, in time—just as the regulation has been amended now, it may be amended

again. It's perhaps just as they delete it, I think one of the problems with regard to mustaches was whether they went below the lip. Before that regulation I suppose this officer (Indicating) would have been in violation. Now that part has been modified so he's certainly not in violation. I think it's at least a good faith attempt on the commissioner to have some kind of regulation, some reasonable regulation. There are some people, I suppose, who can wear mustaches like that that look terrible, also that do not trim them, that do not look neat.

The Court: As I recall it, Holmes' mustaches was over his lip. They used to call it soup strainers. Because it was Mr. Justice Holmes, I suppose he looked dignified or Mr. Chips in the movies had one that came over his lip. That's why I say its difficult to fix standards for these personal appearance requirements.

Mr. Sweeney: Well, in summary, I would like to say that it is our position—I think the sum and substance of the complaint had been that the regulation as it stood then was unreasonable rather than saying there should be no regulation at all.

The Court: Haven't these regulations been tested any place else in the country since this Court of Appeals' decision came out?

Mr. Sweeney: Not to my knowledge, your Honor. In fact, I have many calls in my office saying what is happening in this case because—

The Court: I had a few calls, one from Justice Meyer because he had a firemen's case out there and wanted a copy of my opinion. This was before the Court of Appeals reversed. I don't know what he did with that.

Mr. Sweeney: That went to the Court of Appeals. That was firemén. It was a different regulation. It's a different category, entirely. The Court sent it back here to show some public need. Commissioner has testified to

safety, to neatness that the public expects some kind of visible sign of law enforcement to have a proper appearance. There's been testimony that it's part of the uniform, just as much as the fact that the uniform may be blue and there's a badge, revolver, et cetera, and lastly, that it does maintain some kind of border within a police force.

The legitimate state interest the Circuit Court mentions, the enforcement of the laws of the State of New York, is certainly a legitimate state interest. The regulation itself, it's not so tight. If somebody violates a regulation, it's like anything else, there's a charge leveled and there are hearing procedures. It's not cut and dry "You're off the force," or anything to that effect at all. I find myself hard pressed as your Honor did, to argue the case where a patrolman is assigned outside as a detective. Now he is not in that uniform and he is supposed to look like a civilian. He's supposed to blend in with the community, so to speak. Whether or not how long his hair could be? The only thing I have to say to that he is always subject to the discretion of the commissioner. He is required to have a uniform and if that is there, then there has to be some regulation there also, although I have to admit my argument is certainly not as strong with the uniform patrolman. It's my position the regulation should stand so that the Suffolk County Police Department can present itself uniformly, representing a quasi military force with dignity, well identified and recognizable to the public being served.

The Court: Would you like to submit anything further or are you resting on what you are saying?

Mr. Sweeney: As to the law, Greenwald against Frank is certainly as specific as it's ever going to get. I think probably the most predominant case in the country. It's a Court of Appeals' decision. There is no decision on the merits at this time. The Circuit Court while they said

many things are saying it by way of dicta, perhaps by way of guidelines to say, "Take it seriously when it goes back." Other than that, I would state Greenwald against Frank as precedent for your Honor upholding the regulation as being a modest regulation, as being reasonable and being something within the police commissioner's powers. Thank you.

The Court : Mr. Wexler, are you aware of any decision on preparing regulations, fire or police?

Mr. Wexler: Long Island Conductors. Same hair regulation, same argument as safety.

The Court: Some clerk thought I should have it as a related case, under our rules of individual assignment, if a case is related, it goes to the Judge who had the previous case, but I didn't think it was related and I directed it go into the wheel and I think Judge Constantino had that one.

Frankly, the same problems, in my humble opinion and I made that determination as a Chief Judge and not as a District Judge. It just occurred to me that there is a different kind of need for regulation in the police department or even the fire department as there is in the Long Island Railroad. Frankly, I can see little reason for the Long Island Railroad.

Mr. Wexler: They claimed the very same thing. At the beginning when you said—I didn't know they were coming in on safety or cleanliness or discipline as they did in all three in the conductors' case.

The Court: How many attackers—conductors as policemen? Policemen's job is dealing with the public a good part of the time. The conductor meets the general public, people going to business, shopping, coming and going back. They have obstreperous individuals once in a while. The need is less there than in the police department. Are you aware of Justice Meyer's case in Nassau County? I never got a copy of his opinion. I don't think he followed mine.

Mr. Wexler: He distinguished it because they were vol-

untary firemen involved, used that as the distinguishing factor.

The Court: Were these only voluntary?

Mr. Wexler: Only voluntary. That distinguished it from the other.

I would like to be heard briefly, your Honor. I realize my friend—

The Court: Excuse me, were you in the Greenwald case?

Mr. Wexler: No.

The Court: Do you know the lawyers who were?

Mr. Wexler: I know the lawyers who were.

I know the Greenwald case and I know it was referred to in my friend's brief and he argued it before the Circuit Court of Appeals. They answered the issue specifically and they refer to the case and they do distinguish it on the two points. Number one, the police are no longer a quasi military. It's a constitutional issue.

The Court: I thought they came to a different conclusion, that's all.

Mr. Wexler: They came to a different conclusion in the Greenwald case. I agree. I think this Court understands the issue. I don't intend to—I planned to use the hackneyed thing, Christ, Mohammed, Confucius would be in violation, Grant, Lincoln and so forth. You know—

The Court: I don't think they would make the police force.

Mr. Wexler: The hair regulation. The more significant thing, I'm a great believer in law. Somehow when the law doesn't fit it, it means a law shouldn't be there. The law doesn't fit in here. We can't work—I have to agree with them—they're trying to draw lines. I'm trying to knock the lines down. In afield of this, it just doesn't fit even though they have the burden of preving this case, of course, they can't prove it. It's like the obscenity cases. They'll go on and on until we let it seek its own level. It will. It's just a matter of time. They say the police department is

acting in good faith. I have to disagree. We had to bring them to Court. We had to come back again to get changes. There wouldn't have been changes. Leave it alone. It will seek its own level. I think I can say that based upon law we know, when things don't work legally, something is wrong. The law shouldn't apply and leave it alone. Thank you, your Honor.

The Court: I'm disturbed by one phase of the case. That's the proof as to whether the police department loses its effectiveness because of the length of hair and, of course,—

Mr. Sweeney: With regard to the public surveys.

The Court: That's right, Commissioner Rapp just said that some members of the department have indicated that they object to it. They don't like it. They don't think it's right and some individual members of the public feel that way. Well, it's easy to get support for both sides. He didn't express an opinion as to how the general public felt and the real testimony is the description of the hazards that place policemen in jeopardy by reason of long hair, long beards. Did you intend ordering a copy of these minutes?

Mr. Sweeney: Not at this time.

The Court: I have to make findings. I find it difficult.

Mr. Sweeney: In that case, I'll order a copy.

Mr. Wexler: We'll submit it to the Court, your Honor.

The Court: I don't think there's any need for expediting or giving me a daily on this. It usually takes a week or ten days. If you're not in a hurry? Then that would be good enough.

Mr. Sweeney: The Court is increased substantially.

The Court: Decision reserved. If anything happens between now and the time I file my findings and write my decision, that you become aware of, I appreciate your advising me of it. I'll read all the opinions in Greenwald against Frank.

Exhibit A—New Regulations of the Suffolk County Police Department.

POLICE DEPARTMENT, COUNTY OF SUFFOLK, N. Y.

PDCS-2008

☐ SPECIAL ☐ PERSONNEL ☒ GENERAL

DATE: 26 Nov., 1973 AUTHORITY: Police Commissioner

SIGNATURE: Eugene R. Kelley

DISTRIBUTION: ☐ ALL MEMBERS ☐ ALL COMMANDS ☐ COMMANDS CONCERNED ☐ TELETYPE

Effective 15 November, 1975, 2/2.16 of the Rules and Procedures are amended as follows:

A. Hair will be neat, clean, trimmed and present a groomed appearance. Hair will not go below the ears or the collar except the closely cut hair on the back of the neck. Pony tails are prohibited. In no case will the bulk or length of the hair interfere with the proper wear of any authorized headgear.

B. If a member chooses to wear sideburns, they will be neatly trimmed. Sideburns will not extend below the lowest part of the ear. Sideburns shall not be flared beyond 2″ in width and will end with a clean-shaven horizontal line. Sideburns shall not connect with the mustache.

C. A neatly trimmed mustache may be worn.

These new regulations are promulgated in an effort to permit members of the Department to conform to the change in men's hairstyle. However, these regulations are experimental and will be revoked if abused. It is expected that all members shall be neat in appearance and conform to the highest standards of the Suffolk County Police Department.

Notice of Appeal Dated December 6, 1971.

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

THOMAS DWEN, as President of the Suffolk County Patrolman's Benevolent Association and THOMAS DWEN, Individually,

Plaintiff,

against

JOHN L. BARRY, Commissioner of the Suffolk County Police Department,

Defendant.

NOTICE IS HEREBY GIVEN that THOMAS DWEN, as President of the Suffolk County Patrolman's Benevolent Association, and THOMAS DWEN, Individually, Plaintiff above named, appeals to the Court of Appeals for the Second Circuit from a Memorandum of Decision and Order of the HON. JACOB MISHLER dated November 8, 1971, said Order denying Plaintiff's request for a preliminary injunction, as well as a Memorandum of Decision and Order of the HON. JACOB MISHLER dated November 30, 1971 dismissing the Complaint herein.

Dated: December 6, 1971

MEYER & WEXLER, Esqs.
Attorneys for the Appellant

BY s/ Richard T. Haefeli
RICHARD T. HAEFELI
28 Manor Road
Smithtown, New York 11787
(516) 265-4500

To: The Hon. GEORGE W. PERCY, JR.
Attorney for the Defendant
County Attorney, Suffolk County
County Center
Riverhead, New York 11901

Affidavit of Eugene R. Kelley Sworn to November 16, 1971.

UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF NEW YORK

[SAME TITLE]

STATE OF NEW YORK }
COUNTY OF SUFFOLK } ss.:

EUGENE R. KELLEY, being duly sworn, deposes and says:

1. That he is the duly appointed Deputy Commissioner of the Suffolk County Police Department and submits this affidavit in behalf of the Police Commissioner of Suffolk County (the defendant herein), who is out of the County and unavailable.

2. That he has read the decision of the Hon. Jacob Mischler, United States District Judge dated November 8, 1971 concerning this case and has been informed of the contents of the brief submitted on behalf of plaintiffs herein.

3. For the information of the Court, your deponent has set out in the following paragraphs the rationale of the Police Commissioner's General Order #71-1 (Grooming Standards) as it relates to Plainclothesmen and Detectives.

4. The permanent civil service rank of every sworn member of this department who serves as a plainclothesman or detective, is that of a Patrolman in the Suffolk County Police Department.

5. Detectives are assigned to such positions solely at the discretion of the Police Commissioner and can be returned to uniformed duty at any time. They serve in the Detective Division and they number about 450.

6. Plainclothesmen are patrolmen who have been designated to perform certain duties in civilian clothes. They serve in the Patrol Force, the same division to which all uniformed personnel are assigned. They are designated plainclothesmen by the Precinct Commanders with the approval of the Police Commissioner. There are presently 52 plainclothesmen in this department.

7. Every detective and every plainclothesman in this department has been, and is presently subject to the same set of rules, both as to discipline and grooming. We live in a volatile society where trouble can erupt in any setting. Schools, labor establishments and prisons have all been settings for disorder. This department has mobilization procedures which range from assembling a few patrolmen to full mobilization of the entire department (i.e. —Everyone reports to his station "in uniform" for the emergency, detectives included). This department was fully mobilized for the Stony Brook University riot in May 1969, and Carleton Park disorders in the summer of 1970. Such disorders can occur at any time.

8. Detectives and plainclothesmen have been ordered into uniform on many occasions in the past for such things as industrial disputes, National Security details, riot control, assignments involving V.I.P.s, Parade, Funeral and Escort details. Frequently, time is so short, there is no time to get to the Barber Shop and hence my belief, detectives and plainclothesmen should fall under the same grooming standards as the uniformed force.

Affidavit of Eugene R. Kelley Sworn to November 16, 1971.

9. In addition, detectives and plainclothesmen frequently are on the lecture circuit, speaking at schools, luncheons, etc. Since they appear as members of this department and, in fact, represent the department itself, they should be subject to the same regulations as the uniformed force.

10. The Rules and Procedures of this department require every detective and plainclothesman to maintain a full set of uniforms ready for instant use, and provide for uniform inspection twice a year.

11. The President Judge of the Suffolk County District Court has recently requested your deponent to have all policemen to testify in that court appear neatly dressed and groomed despite the fact they may be detectives, etc. This for the reason that juries apparently find neatly dressed and neatly groomed policemen more credible than those who are not so neatly dressed or groomed.

12. This Court is also asked to consider the possible damage to morale of this department were it to attempt to administer and apply a "double standard" as to grooming of members of the force, one for the uniformed division and one for the detective division. The Court, by its decision dated November 8, 1971, has apparently ruled that General Order 71-1 violates no Constitutional principles as it relates to uniformed policemen. Thus, the overwhelming majority of this department falls within the ambit of the Court's decision. This Court is asked not to make an exception for detectives and plainclothesmen who comprise only about 20% of the total force, but whose members presently enjoy almost 100% of those exemptions already granted by the Commissioner to the provisions of General Order #71-1.

Memorandum of Decision and Order Dated November 8, 1971.

13. Finally, this Court is assured that exemptions will be (and have been) made to General Order 71-1 to fit the exigencies and demands of this department and for surgical, medical or cosmetic reasons involving individual members of the force.

s/ Eugene R. Kelley
Deputy Commissioner

[Duly Sworn to November 16, 1971.]

Memorandum of Decision and Order Dated November 8, 1971.

UNITED STATES DISTRICT COURT
Eastern District of New York

[SAME TITLE]

Plaintiff, a patrolman employed by the Suffolk County Police Department and president of Suffolk County Patrolmen's Benevolent Association, seeks a preliminary injunction enjoining enforcement of general order number 71-1, which order amends Chapter 2 of the Rules and Procedures of the Suffolk County Police Department, which became effective August 1, 1971. The order sets grooming standards for members of the Suffolk County Police Department.[1] Under the order, beards and goatees are forbidden; sideburns may "not extend below the low-

[1] Order set out in appendix.

est part of the exterior ear opening"; and mustaches must be short and neatly trimmed. The affidavit in support of the application states that community standards are less restrictive and that compliance with the order will, in effect, set him apart from the community in violation of his constitutional rights. The claim sets forth First and Fourteenth Amendment violations in that the order deprives plaintiff of his right of free expression, due process and equal protection of law.

Uniformity of dress is part of the discipline of the local police department. It is the visible sign of the presence of the law. How the police officer appears to the public is one factor in effective law enforcement. Regulations involving dress and grooming are better left to the officials who are aware of the local customs and taboos. It would be inappropriate for the court to frame such regulations, absent a clear showing of a violation of a constitutional right.

Circuit (now Chief) Judge Friendly in *Negron* v. *Wallace,* 436 F.2d 1139, 1141 (2d Cir. 1971), discussing a claim brought in the federal court under 42 U.S.C. § 1983, said, "Suits under that statute should not be lightly brought." He suggested that such claims be resolved ". . . by calm discussions with the state officials in the absence of any litigation whatsoever."

Turning to the merits of the application, authority for defendant's position is found in decisions reviewing army regulations concerning grooming. *Doyle* v. *Koelbe,* 434 F.2d 1014 (5th Cir. 1970). Plaintiff would distinguish those cases from the instant case on the ground that the New York Criminal Procedure Law includes in the definition of police officer certain members of the New York City Fire Department and investigators on the staff of county district attorneys.

The intent of the regulation is that it apply to uniformed police officers. This is evident from the list of exemptions submitted to the court by defendant as of August 18, 1971.[2] Application of the regulation to members not in uniform might very well bring the regulation within the prohibitions of the Constitution. *See Griswold* v. *Connecticut,* 381 U.S. 479, 85 S.Ct. 1678 (1965).

Nor is the attempt by the plaintiff to distinguish police from the military for the purposes of the regulation persuasive. The courts have held that members of the armed forces do not have their full constitutional rights while serving in the service. *Raderman* v. *Kaine,* 411 F.2d 1102 (2d Cir. 1969). In *Raderman,* the court indicated that it did not intervene in the matter involving a directive revoking one permitting long hair because ". . . there is clearly no action by the military which goes far beyond any rational exercise of discretion."

The plaintiff further distinguishes the duties of the police from that of the military in pointing out that the police officer has duty and non-duty hours. The court, assuming this questioned state, would nevertheless find a closer fact pattern in the case of a member of the National Guard.

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[2] Those exempted to August 18, 1971:

4 Detectives—Intelligent Squad, Undercover assignment, must frequently associate with persons and in circles where extreme hair styling is prevelant.

48 Detectives—Narcotics Squad.
Undercover assignment as above.

4 Detectives—Special Investigations Squad. (Gambling, Vice, etc.)
Undercover assignment as above.

1 Detective —Robbery Squad.
Special assignment to infiltrate members of gang.

Memorandum of Decision and Order Dated November 8, 1971.

In *Gianatasio* v. *Whyte*, 426 F.2d 908 (2d Cir. 1970), the plaintiff enlisted in the National Guard. Plaintiff was the manager of a shoe bazaar in Westport, Connecticut and claimed that his long hair helped him in his job and that it was essential to his civilian work. Because of his refusal to cut his hair as required by Army regulations, he was ordered to report for active duty. The court dismissed the attack on the validity of the regulation with the observation that the military has wide discretion in regulating hair length. *Gianatasio* v. *Whyte*, supra, at p. 911.

Motion for a preliminary injunction is denied, and it is

So Ordered.

The court believes the claim is insufficient as a matter of law. It is however reluctant to dismiss the complaint without affording plaintiff an opportunity to argue the point. The court sets the matter down for argument on November 19th, 1971 at 10:00 A.M. All briefs to be submitted by November 15th, 1971.

Jacob Mishler
U. S. D. J.

Order Number 71-1 Amending Rules and Procedures

POLICE DEPARTMENT, COUNTY OF SUFFOLK, N.Y.

☒ General
☐ Special
☐ Personnel Order Number 71-1 Date 19 July, 1971
Authority Police Commissioner
Signature of Authority John L. Barry

Effective 0001 hrs. 1 August, 1971 Chapter 2 of the Rules & Procedures is amended by the addition of the following section:

2/75.0 Members of the Force and Department shall be neat and clear at all times while on duty. Male personnel shall comply with the following grooming standards unless excluded by the Police Commissioner due to special assignment:

2/75.1 Hair: Hair shall be neat, clean, trimmed, and present a groomed appearance. Hair will not touch the ears or the collar except the closely cut hair on the back of the neck. Hair in front will be groomed so that it does not fall below the band of properly worn headgear. In no case will the bulk or length of the hair interfere with the proper wear of any authorized headgear. The acceptability of a member's hair style will be based upon the criteria in this paragraph and not upon the style in which he chooses to wear his hair.

2/75.2 Sideburns: If an individual chooses to wear sideburns, they will be neatly trimmed and tapered in the same manner as his haircut. Sideburns will not extend below the lowest

part of the exterior ear opening, will be of even width (not flared), and will end with a clean-shaven horizontal line.

2/75.3 MUSTACHES: A short and neatly trimmed mustache may be worn, but shall not extend over the top of the upper lip or beyond the corners of the mouth.

2/75.4 BEARDS & GOATEES: The face will be clean-shaven other than the wearing of the acceptable mustache or sideburns. Beards and goatees are prohibited, except that a Police Surgeon may grant a waiver for the wearing of a beard for medical reasons with the approval of the Police Commissioner. When a Surgeon prescribes that a member not shave, the beard will be kept trimmed symmetrically and all beard hairs will be kept trimmed so that they do not protrude more than one-half inch from the skin surface of the face.

2/75.5 WIGS: Wigs or hair pieces will not be worn on duty in uniform except for cosmetic reasons to cover natural baldness or physical disfiguration. If under these conditions, a wig or hair piece is worn, it will conform to department standards.

Answer.

UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF NEW YORK

[SAME TITLE]

Defendant answering the complaint herein by George W. Percy, Jr., County Attorney of Suffolk County, respectfully alleges:

FIRST: Denies the allegations contained in paragraphs of the complaint numbered 1, 5 and 6.

WHEREFORE, defendant respectfully requests that the complaint be dismissed together with such other and further relief as to the court may seem just and proper.

s/ GEORGE W. PERCY, JR.
George W. Percy, Jr.
County Attorney, Suffolk County
Attorney for Defendant
Suffolk County Center
Riverhead, New York 11901
(516) 727-4700

Summons.

UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF NEW YORK

[SAME TITLE]

TO THE ABOVE NAMED DEFENDANT:

You are hereby summoned and required to serve upon Leonard D. Wexler, Esq., plaintiff's attorney, whose address is 22 Manor Road, Smithtown, New York, an answer to the complaint which is herewith served upon you, within 20 days after service of this summons upon you, exclusive of the day of service. If you fail to do so, judgment by default will be taken against you for the relief demanded in the complaint.

s/ LEWIS ORBEL
Clerk of the Court

By s/ JAMES R. ABRAM
Deputy Clerk

Dated: Aug. 4, 1971.

Complaint.

UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF NEW YORK

[SAME TITLE]

I. Jurisdiction.

1. The jurisdiction of this Court is founded upon the existence of a federal question.

This action arises under the First and Fourteenth Amendments to the Constitution of the United States. This is an action for a declaratory judgment and a permanent injunction to prevent the further deprivation of the plaintiff's constitutional rights of free expression, due process and equal protection as provided for in the First and Fourteenth Amendments to the Constitution of the United States.

II. Parties

2. The plaintiff, Thomas Dwen is President of the Suffolk County Patrolmen's Benevolent Association as well as an individual patrolman of the Suffolk County Police Department who resides in the County of Suffolk, State of New York.

3. The defendant, John L. Barry is the Commissioner of the Suffolk County Police Department, a State agency charged with the responsibility of maintaining public peace and welfare and John L. Barry is an employee and Chief Administrator of said police department.

III. Incidents at Issue.

4. On July 19, 1971, the defendant, John L. Barry in his capacity as Commissioner of the Suffolk County Police Department issued general order number 71-1 of the Suffolk County Police Department; said order amending Chapter 2 of the Rules & Procedures of the Suffolk County Police Department and became effective as of 12:00 midnight on August 1, 1971.

That said general order amended the aforementioned rules and regulations regarding the length of hair and sideburns, as the wearing of beards and mustaches by members of the Suffolk County Police Department. (Annexed hereto and made a part hereof and marked Exhibit A is a true and exact copy of said general order.)

IV. Cause of Action.

5. That the aforementioned amendment of the Rules & Procedures regarding the personal grooming of individual patrolmen is in violation of the plaintiff's constitutional rights of free expression, due process and equal protection as provided for in the First and Fourteenth Amendments to the Constitution of the United States, in that said rules and regulations are not based upon the generally accepted standard of grooming in the community and that it places an undue restriction upon the plaintiff in his activities in the community.

6. Plaintiff is now suffering and will continue to suffer irreparable injury as a result of the aforementioned restriction imposed by the defendant. Plaintiff has no plain, adequate or complete remedy at law to redress these violations of his constitutional rights, and this suit for

permanent injunction and declaratory judgment is his only means of securing complete and adequate relief.

Wherefore, plaintiff prays that this Court:

(a) Declare that the aforementioned amendment of the rules and regulations are illegal and in violation of the plaintiff's constitutional rights.

(b) Declare that the plaintiff be permitted to adapt a mode of personal grooming which conforms to the generally accepted standard of the community.

(c) Grant the plaintiff a permanent injunction, ordering the defendant, his agents, servants and/or employees and all persons in active concert with him from enforcing Chapter 2 of the Rules & Procedures of the Suffolk County Police Department as amended by general order number 71-1 of the Suffolk County Police Department.

(d) Grant the plaintiff nominal compensation and punitive damages in the amount of One ($1.00) Dollar.

(e) Grant such other and further relief as to this Court seems just and proper.

Respectfully submitted,

Leonard D. Wexler
Attorney for Plaintiff
Office & P. O. Address
28 Manor Road
Smithtown, New York
(516) 265-4500

Order to Show Cause Dated August 4, 1971.

UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF NEW YORK

[SAME TITLE]

Upon reading and filing the summons and complaint and the annexed affidavits of Thomas Dwen, duly sworn to the 3rd day of August, 1971, and Leonard D. Wexler, Esq., duly sworn to on the 3rd day of August, 1971, and the exhibits attached hereto, it is

ORDERED, that John L. Barry, Commissioner of the Suffolk County Police Department show cause at a Motion Term part of this Court to be held in Court Room #5, United States Court House, 225 Cadmen Plaza East, Brooklyn, New York, on the 10th day of August, 1971, at 10:00 o'clock in the forenoon of that day or as soon thereafter as counsel can be heard why an order should not be made pursuant to Rule 65 of the Federal Rules of Civil Procedure, enjoining John L. Barry, Commissioner of the Suffolk County Police Department, from enforcing General Order #71-1 of the Suffolk County Police Department dated the 19th day of July, 1971, said order amending Chapter 2 of the Rules and Procedures of the Suffolk County Police Department, and it is further

ORDERED, that service of a copy of this Order, the papers upon which it is based and the summons and complaint shall be made personally upon said John L. Barry, Commissioner of the Suffolk County Police Department on or

before the 5th day of August, 1971, at or before 2:00 P.M. o'clock and that said service shall be deemed sufficient.

s/ JACOB MISHLER
United States District Judge

Service by Richard A. Haefeli a person over the age of 21 years old not a party to the litigation is authorized to serve process.

s/ JACOB MISHLER
U.S.D.J.

Affidavit of Thomas Dwen Dated August 3, 1971.

UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF NEW YORK

[SAME TITLE]

STATE OF NEW YORK)
COUNTY OF SUFFOLK) ss.:

THOMAS DWEN, being duly sworn, deposes and says:

That your deponent is the plaintiff in the above entitled action, and as such is fully familiar with all of the facts and circumstances as hereinafter set forth.

That your deponent, as President of the Suffolk County Patrolmen's Benevolent Association as well as an individual patrolman of the Suffolk County Police Department, submits this affidavit in support of the within application requesting an Order enjoining John L. Barry, Commissioner of the Suffolk County Police Department from enforcing Chapter 2 of the Rules and Procedures of the Suffolk County Police Department as amended by General Order #71-1 of the Suffolk County Police Department. (Annexed hereto, made a part hereof and marked Exhibit "A" is a true and exact copy of said General Order.)

That the Police Commissioner's attempt to regulate length of hair and sideburns as well as the wearing of mustaches beards is an infringement upon your deponent's constitutional rights of free expression, due process and equal protection as provided for in the First and Fourteenth Amendments to the United States Constitution.

That your deponent respectfully submits to this Court that for any Police Department's Rules and Procedures regarding personal grooming to be valid, they must be

based upon the generally accepted standard of grooming in the community in which said Police Department is located.

That in the instant case, the amended Rules and Procedures are not based upon such a standard, rather they are based upon the personal standard of the Police Commissioner.

That your deponent, as a member of the community, knows of his own knowledge that the amended Rules and Procedures are more restrictive than the generally accepted standard of the community.

That enforcement of the amended Rules and Procedures will prevent your deponent from establishing his identity in the community separate and apart from his identity as a patrolman, and that such a consequence would violate your deponent's constitutional rights.

Further, your deponent respectfully points out to this Court that enforcement of the amended Rules and Procedures based upon the personal standard of the Police Commissioner and not the generally accepted standard of the community will be in violation of your deponent's constitutional rights.

That your deponent, simultaneously with this motion, is instituting a civil action against the defendant for a declaratory judgment and permanent injunction. (Annexed hereto, made a part hereof and marked Exhibit "B" is a true and exact copy of said summons and complaint.)

WHEREFORE, your deponent respectfully requests that the within application be, in all respects, granted.

s/THOMAS DWEN
Thomas Dwen

[Duly sworn to
August 3, 1971].

Affidavit of Leonard D. Wexler Dated August 3, 1971.

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

[SAME TITLE]

STATE OF NEW YORK }
COUNTY OF SUFFOLK } ss.:

LEONARD D. WEXLER, being duly sworn, deposes and says:

That your deponent is the attorney for the plaintiff herein and as such is fully familiar with all of the facts and circumstances as hereinafter set forth.

That your deponent respectfully submits to this Court that an order to show cause and restraining order are necessary in this case in view of the constitutional nature of the issue involved, and that the plaintiff's constitutional rights will be violated unless the relief requested is granted.

That your deponent respectfully submits to this Court that the granting of a restraining order pending a hearing for a preliminary injunction will in no way injure the defendant herein.

That your deponent respectfully submits to this Court that the plaintiff has no adequate remedy at law and in view of fact that the plaintiff is presently suffering irreparable injury as a result of the defendant's actions time is of the essence.

That no prior application for the relief sought herein has been requested in this or any other Court.

WHEREFORE, your deponent respectfully requests that the within application be, in all respects, granted.

Leonard D. Wexler

[Duly sworn to
August 3, 1971.]

Supreme Court, U. S.
FILED
JUL 12 1975
MICHAEL RODAK, JR., CLERK

APPENDIX

(DEFENDANT'S EXHIBIT B—RULES AND PROCEDURES)

Supreme Court of the United States

OCTOBER TERM, 1975

No. 74-1269

JOHN L. BARRY, Commissioner of the SUFFOLK COUNTY POLICE DEPARTMENT,

Petitioner,

against

THOMAS DWEN, as President of the Suffolk County Patrolmen's Benevolent Association and THOMAS DWEN, Individually,

Respondent.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

PETITION FOR CERTIORARI FILED APRIL 8, 1975
CERTIORARI GRANTED MAY 27, 1975

DEFENDANT'S EXHIBIT B--RULES AND PROCEDURES

rules and procedures

POLICE DEPARTMENT
COUNTY of SUFFOLK
NEW YORK

Pursuant to the authority vested in me by the Charter of the County of Suffolk and subject to the pertinent rules of the Suffolk County Civil Service Commission and the statutes of the State of New York, the Police Department, County of Suffolk, New York, Rules and Procedures are hereby effective and published this date for the administration, control, disposition and government of the members and employees of the Police Department.

All rules, regulations and orders previously promulgated which are not incorporated herein are herewith revoked.

John L. Barry

JOHN L. BARRY
Police Commissioner

preface

FIRST PRINTING, ... FEBRUARY, 1967
SECOND PRINTING, ... DECEMBER, 1968
THIRD PRINTING, ... DECEMBER, 1972

REFERENCE TO THE RULES AND PROCEDURES

Reference are by Chapter, Section and ,aragraph number. For example; ''2/14.3'' refers to Chapter 2, Section 14, paragraph 3. References within the same chapter are indicated by a section number only. Index reference, example; ''2/14.3 - 14.6 signifies an inclusive reference within Chapter 2.

RESEARCHING THE RULES AND PROCEDURES

Research can be accomplished not only through the index, but through the Table of Contents also. By referring to the Table of Contents, one will find a listing of all sections within a chapter. After turning to the chapter and sections desired, marginal sub-titles identify each paragraph.

AMENDMENTS TO THE RULES AND PROCEDURES

Future amendments will be prepared annually for insertion in the Rules and Procedures. If a particular amendment is urgent, it will be made effective by a Special Order via teletype. Each member is responsible that the amendments he receives to his Rules and Procedures are inserted immediately. The pages amended (replaced by new pages) are to be destroyed immediately by the member. Amendments via teletype will be noted under the appropriate chapter, section, and paragraph of the Rules and Procedures by the member.

Published by:
Police Department, County of Suffolk, N.Y.
Veterans Memorial Highway
Hauppauge, New York

PDCS-R&P **part I**

administrative section

administrative section

rules and procedures

POLICE DEPARTMENT, COUNTY OF SUFFOLK, NEW YORK

E 4

Defendant's Exhibit B--Rules and Procedures

CHAPTERS CONTAINED WITHIN THIS SECTION

CHAPTER 1 .....ORGANIZATIONAL STRUCTURE
CHAPTER 2 .....GENERAL REGULATIONS
CHAPTER 3 .....ABSENCE AND ATTENDANCE
CHAPTER 4 .....UNIFORMS AND EQUIPMENT
CHAPTER 5 .....DISCIPLINE AND PUNISHMENT
CHAPTER 6 .....COURTESIES AND RECOGNITIONS
CHAPTER 7 .....WRITTEN ORDERS AND MEMORANDA
CHAPTER 8 .....RECORDS AND FILES
CHAPTER 9 .....FORMS SYSTEM

E 5

Defendant's Exhibit B--Rules and Procedures

Title — 1.0 LEGAL STRUCTURE

Creation — 1.1 The Police Department, County of Suffolk, New York was created on 1 January, 1960 by Chapter 278 of the Laws of 1958, known as the Suffolk County Charter.

Terminology — 1.2 The term ''Police Department'' or ''Department'' means the Department of Police of the County of Suffolk, New York and such term includes the term ''Police Force''. The term''Police Force''or''Force'' includes all members of the Department excepting those members appointed to render clerical, mechanical, laboring services, crossing guards, or such other positions classified as non-police.

Police Budget — 1.3 The Police Department operates as two units, Headquarters and Police District, each with separate budgets.

H.Q. Budget — A. The Headquarters unit functions on a county-wide basis and is divided into offices, divisions, bureaus, sections and units.

Police District Budget — B. The Police District renders services to the territory within the County which consists of: The Towns of Babylon, Huntington, Islip, Smithtown and Brookhaven; and the Incorporated Villages of Lindenhurst, Babylon, Patchogue, Brightwaters, The Branch, Old Field, Poquott, Port Jefferson, Belle Terre, Shoreham, Bellport and Lake Grove. The Police District is divided into zones, precincts, sectors and posts.

organizational structure

Title 2.0 ORGANIZATIONAL STRUCTURE

Command Listing 2.1 The following offices, Divisions, Bureaus, Sections and Units are established and maintained:

Police Commissioner's Structure

2.2 Office of the Police Commissioner.

A. Central Administration
(1) Public Information & Management Services
a. Internal Management Consultants
b. Public Information Officer
(a) Shield 370 Editorial Staff
c. Data Processing Liaison
(2) Budget Management Staff
(3) Central Planning & Special Operations
a. Central Planning Staff
(1) Management Services
b. Special Operations
(1) Headquarters Security
B. Deputy Commissioner

1. Organized Crime Control Bureau
(a) Criminal Intelligence Section
(b) Special Investigation Section
(c) Organized Crime Section
(d) District Attorney Section
2. Legal and Inspection Bureau

Detective Division Structure

2.3 Office of Chief of Detectives
A. General Service Bureau
(1) North Zone Detective Section
a. 2nd Squad Unit
b. 4th Squad Unit
c. 6th Squad Unit
(2) South Zone Detective Section
a. 1st Squad Unit
b. 3rd Squad Unit
c. 5th Squad Unit
(3) East Zone Detective Section
a. 7th Squad Unit.

organizational structure

B. Technical Service Bureau
(1) Main Office Administration Section
(2) Laboratory Section
(3) Identification Section
(4) Fugitive Section
C. Special Crime Bureau
(1) Homicide Squad Section
(2) Narcotics Squad Section
(3) Crime Control Section
a. Robbery Unit
b. Auto Theft Unit
c. Arson-Unit
d. Lost Property Unit

Operations Division Structure

2.4 Office of Chief of Operations
A. Transportation & Maintenance Bureau
(1) Vehicle Maintenance Section
(2) Building Maintenance Section
B. Property Bureau
(1) Recovered Property Section
(2) Impound Section
C. Supply & Procurement Bureau
(1) Quartermaster Section
(2) Printing Section
(3) Armorer Section
D. Pistol License Bureau
E. Communications Bureau
(1) Technical Service Section
(2) Complaint Dispatching Section
F. Aviation Bureau
(1) Aircraft Maintenance Section
(2) Aviation Flight Section

Personnel Division Structure

2.5 Office of Chief of Personnel
A. Personnel Bureau
(1) Personnel Records Section
(2) Payroll Section
(3) Investigation Section
(4) Medical Section
(5) Chaplains Section

organizational structure

B. Police Academy Bureau
(1) Recruit Section
(2) In-Service Section
(3) Firearms Section
(4) Audio Visual Section
C. Finance Bureau
(1) Audits Section
D. Central Records Bureau
(1) Records Section
(2) Reports Section
(3) Warrants Section
(4) Revocations Section
E. Civil Defense Bureau
F. Community Service Bureau
(1) Youth Section
(2) Community Relations Section
(3) Speakers Section
(4) P.A.L. Section

Patrol Division Structure

2.6 Office of Chief of District
A. Highway Patrol Bureau
(1) Engineering Section
(2) Enforcement Section
(3) Emergency Service Section
B. Marine Bureau
(1) Barrier Beach Section
C. Special Patrol Bureau
(1) Canine Section
(2) Courts Section
(3) Truck Scales Section
D. Precinct Patrol Bureau
(1) 1st Precinct Section
(2) 2nd Precinct Section
(3) 3rd Precinct Section
(4) 4th Precinct Section
(5) 5th Precinct Section
(6) 6th Precinct Section

organizational structure

Title 3.0 OFFICE OF THE POLICE COMMISSIONER

Police Commissioner

3.1 The Police Commissioner has jurisdiction and control of the government, administration, disposition and discipline of the Police Department, the Police Force and the members thereof. During the prolonged absence without means of contact, or disability of the Police Commissioner, such member of the Force as the Police Commissioner may designate, possesses all the powers and performs all the duties of the Police Commissioner except the power of making appointments and transfers. Any officer, acting as the Police Commissioner, carries out the orders of the Police Commissioner, previously given. Except in extreme emergency, these orders are not countermanded or set aside. When an order is countermanded or set aside, a report stating the reasons is made to the Police Commissioner. The officer acting upon behalf of the Police Commissioner, assists in administrative matters as directed, and performs such other duties as directed from time to time by the Police Commissioner. When an unforeseen emergency arises and the Police Commissioner, because of any incapacity, is unable to designate such officer, the order of succession to possess all the powers and perform all the duties of the Police Commissioner is as enumerated in 2/3.1.

Central Administration

3.2 Central Administration, commanded by the Chief of Staff, is responsible for the administration and supervision of the Commissioner's

Staff and acts as advisor to the Commissioner on matters relative to the organization, management, policies and procedures of the Department. The Chief of Staff acts as liaison between the Commissioner and the Departmental Divisions and will represent the Commissioner as Labor Relations Liaison between the Department and all labor organizations within the Department. The Central Administrative Staff and its two subdivisions; Public Information and Management Services, and Central Planning and Special Operations perform the functions specified herein.

Functions

A. Administer the following Departmental Programs:
(1) The Employee Suggestion Program
(2) The Forms Control Program
(3) The Cartography Service Program
(4) The Administrative Directives Program
(5) The Information Exchange Program

B. Exercise staff supervision to prevent duplication of effort or conflict with rules, procedures and policies of the Commissioner in the following:
(1) All Special, Personnel, and General Orders.
(2) All General Reporting, Administrative and Command Level Forms.
(3) All Official Publications of the Department
(4) All Systems and Procedures within the Department
(5) All Data Processing Service Requests
(6) All State and Federal Grant Requests

C. Coordinate and evaluate for the Commissioner:

(1) The Planning Programs of all Departmental Commands
(2) The Management Reporting System

D. Prepare the Department Budget and Annual Report

E. Develop by conducting research and studies:
(1) Plant, equipment and personnel needs of the Department

F. Design and Control authorized items such as:
(1) Department maps
(2) Charts and diagrams
(3) Work Schedules

G. Act as liaison between the Department and:
(1) The Data Processing Department
(2) Police labor organizations

H. Maintain the following official Department files:
(1) Special, Personnel, and General Orders
(2) General Reporting, Administrative and Command Level forms
(3) Official Departmental Publications
(4) Rules and Procedures Archives
(5) Policy Statements of the Commissioner
(6) Official Studies and Surveys of the Department

Public Information & Management Services

3.3 Public Information and Management Services, a subdivision of Central Administration, is responsible for all State and Federally funded Programs affecting the Department, in addition to the direct supervision of the following staff functions:

Internal Management Consultants

A. Internal Management Consultants-responsible for the comprehensive and constructive review of operations at all levels of the Department with the objective of improving effectiveness.

organizational structure

Public Information Officer

B. Staffed by the Assistant to the Commissioner who is the official liaison between the Department and members of the news media. He acts as spokesman for the Commissioner, and formulates and disseminates press releases for the Department.

Shield 370 Editorial Staff

(1) The Shield 370 Editorial Staff coordinates all Department news and prepares and edits the monthly magazine "Shield 370".

Data Processing Liaison

C. The Data Processing Liaison is responsible for coordinaiion between the Police Department and the Department of Data Processing with the objective of increasing police services by exercising staff supervision over requests for data processing services and establishing Departmental priorities for these requests.

Budget Management Staff

3.4 The Budget Management Staff is responsible for developing current and long range budgetary needs while exercising sound administration of all monies allotted to the Department for operating expenses. The Budget Staff also prepares and controls the annual Department Budget.

Central Planning & Special Operations

3.5 Central Planning and Special Operations, a sub-division of Central Administration is responsible for coordination and control of all projects resulting from requests for services. Its objective is to meet the needs of management by establishing priorities and exercising staff supervision over the programs it administers. It is also responsible for the direct supervision of the following staff functions:

Central Planning Staff

A. The Central Planning Staff is responsible for conducting research and studies into the plant, equipment and personnel needs of the Department with the following objectives: Design new systems and develop new procedures and methods; provide written instructions for systems, procedures and methods and maintain the Rules and Procedures Manual; and to review, analyze and improve existing systems, procedures and methods.

organizational structure

Management Services Staff

(1) The Management Services Staff is responsible for the administration of the following Departmental Programs:

EMPLOYEE SUGGESTION PROGRAM - The Management Services Staff evaluates all suggestions received and submits a feasibility report on each suggestion processed. If the suggestion is found feasible it is submitted to the Central Planning Staff for development and implementation. If found feasible, recognition is extended to the individual submitting the suggestion.

FORMS' CONTROL PROGRAM - The Management Services Staff exercises control of all Departmental Forms, publications and printed matter. They process any requests for new printed matter, revisions of existing printed matter and abolishment of outdated printed matter.

CARTOGRAPHY SERVICE PROGRAM - The Management Service Staff, designs and controls authorized Departmental charts, maps, diagrams and schedules.

ADMINISTRATIVE DIRECTIVES PROGRAM - The Management Service Staff maintains a record of all Special, Personnel and General Orders in addition to Memoranda issued by the Department. They are also responsible for the staff supervision of all such orders and memoranda. Prior to issuance, this

Staff will review all orders and memoranda to prevent duplication of effort or conflict with established rules, procedures or policies of the Commissioner.

INFORMATION EXCHANGE PROGRAM

The Management Services Staff coordinates all questionnaires directed to the Department and exercises staff supervision over all questionnaires developed within the Department.

Special Operations

B. The Special Operations is responsible for the safety and protection of visiting dignitaries and public officials. When not engaged in their primary function, they carry out special assignments directed by the Police Commissioner.

Headquarters Security

(1) The Headquarters Security Staff is responsible to insure the security and privacy of the Police Headquarters Building.

*SEE Addendum "

Deputy Police Commissioner

3.6 The Deputy Commissioner shall act for and assist the Commissioner as directed by him in such matters as, but not limited to; acts as liaison officer for the Police Commissioner in matters relating to the public; meets with individuals, groups, associations, organizations and commissions on behalf of the Police Commissioner; conducts disciplinary trials of members of the Department; coordinates the activities of the Department Attorney, if any.

Legal & Inspection Bureau

3.7 The Legal and Inspection Bureau conducts inspections and investigations as directed by the Police Commissioner. One member of this Bureau shall also be assigned as Safety Officer.

Organized Crime Control Bureau

3.8 The Organized Crime Control Bureau is responsible for special research, surveillance, and investigation of persons and units of persons who are known members of organized crime groups. The Bureau is a coordinate law enforcement body composed of the Criminal Intelligence Section, Special Investigation Section, Organized Crime Section and District Attorney Section and is responsible to the Deputy Police Commissioner.

Criminal Intelligence Section

3.9 Criminal Intelligence Section compiles data concerning history, activities, associates, movements, etc., of persons known or suspected to be connected with organized crime and who have criminal, business or social activities, in or affecting Suffolk County. They maintain the following files:

1. Criminal Intelligence File
2. Subversive File

The varied investigative activities of the section are coordinated through the Organized Crime Control Bureau.

Special Investigation Section

3.10 Special Investigation Section coordinates and conducts illegal vice, gambling and pornography investigations within Suffolk County. They maintain and operate the sound, recording and investigative devices of the Department. The varied investigative activities of this Section are coordinated through the Organized Crime Control Bureau.

Organized Crime Section

3.11 Organized Crime Section conducts surveillances, interviews and investigation of persons known to be

members of and/or confidants of organized crime groups. The varied investigative activities of this Section are coordinated through the Organized Crime Control Bureau.

District Attorney Section

3.12 The District Attorney Section performs such duties as may be assigned by the District Attorney. Coordinates the law enforcement efforts of the Police Department with that of the District Attorney's Office.

Title

4.0 DETECTIVE DIVISION

Chief of Detectives

4.1 The Chief of Detectives exercises line command over all personnel and operations of the Detective Division and staff responsibility over all detective matters within the Police Department. He keeps the Police Commissioner informed of all important matters, and of any action taken pertaining to the same.

General Service Bureau

4.2 The General Service Bureau performs routine basic investigation services within designated geographic areas.

North Zone Detective Section

4.3 The North Zone Detective Section includes that area in the 2nd, 4th, and 6th Precincts, including the Villages of Lloyd Harbor, Huntington Bay, Asharoken, Northport, Nissequogue, Head of the Harbor, Port Jefferson and Lake Grove. This area is subdivided into three units: Second Squad Unit includes that area in the 2nd Precinct, including the

Villages of Lloyd Harbor, Huntington Bay, Asharoken and Northport. Fourth Squad Unit includes that area in the 4th Precinct, including the Villages of Head of the Harbor, Nissequogue and Lake Grove. Sixth Squad Unit includes that area in the Sixth Precinct including the Village of Port Jefferson.

South Zone Detective Section

4.4 The South Zone Detective Section includes that area in the First, Third and Fifth Precincts, including the Village of Amityville and those portions of the Great South Bay and the Barrier Beach within the Police District. This area is subdivided into three units: First Squad Unit includes that area in the First Precinct, including the Village of Amityville and those portions of the Great South Bay and Barrier Beach within the Town of Babylon. Third Squad Unit includes that area in the Third Precinct, including those portions of the Great South Bay and Barrier Beach within the Town of Islip. Fifth Squad Unit includes that area in the Fifth Precinct, including those portions of the Great South Bay and Barrier Beach within the Town of Brookhaven.

East Zone Detective Section

4.5 The East Zone Detective Section includes that area in the Towns of Riverhead, Southold, Southampton, Easthampton and Shelter Island and consists of the Seventh Squad Unit.

Technical Service Bureau

4.6 The Technical Service Bureau coordinates the resources and personnel of the Main Office Adminis-

trative Section, Laboratory Section, Identification Section, Fugitive Section and District Attorney's Section. Assists the Chief of Detectives Office in the administration of the Detective Division. Assists the General Service Bureau and Special Crime Bureau in the investigation of crime and the detection and arrest of perpetrators.

Main Office Administrative Section

4.7 The Main Office Administrative Section maintains insofar as the business of the Detective Division is concerned, the coordination of police activities between Sections and Units of the Department and with other Police Departments and agencies. In addition this Section is responsible for the following functions:

A. Maintain supervision and control of all division records kept in Headquarters. Information contained in the files of the Detective Division are not released nor made available to other than members of the Police Department, except by permission of the Chief of Detectives. A receipt is obtained and a record kept, of any records physically released.

B. Maintain the following files:
Division Correspondence
Division Investigations
Modus Operandi (Sex Degenerate)
Field Interrogation Reports

C. Receive and record all subpoenas for members of the Detective Division, and forward subpoenas to the Command of the members concerned. Headquarters' records required for court presentation by such member in

answer to subpoena will be available in the Central Records Bureau.

D. Prepare a report by 0915 hours daily for the attention of the Chief of Detectives, of all matters referred to the General Service Bureau for investigation during the twenty-four hour period prior to 0800 hours of the same date, together with important developments of matters previously reported.

E. Supervise activities of civilian clerical employees assigned to the Main Office Administration Section.

Laboratory Section

4.8 The Laboratory Section maintains such equipment as is necessary in the application of scientific aid in the field of law enforcement and criminal investigation. It assists members of the Police Department in the scientific phases of crime investigation by conducting such tests, analyses, and comparisons of a scientific or technical nature as may be required. This Section also researches and develops new or improved techniques in the field of scientific crime investigation.

Identification Section

4.9 The Identification Section maintains and operates a police photographic laboratory.

Makes, processes and distributes such photographs, photostats, sketches and other pictorial reproductions as the operation of the Department may require.

Locates, preserves, and records, latent fingerprints at the scene of a crime and prepares such prints for introduction as evidence in criminal proceedings.

Supervises the taking, classification and control of fingerprints. Makes such searches and comparisons as are required.
Cooperates with the following authorities through the exchange of fingerprints and information as to criminal records; Federal Bureau of Investigation, New York State Identification and Intelligence System, and other interested agencies. All requests for copies of photographs, criminal records and fingerprint data from these and any other outside agencies are forwarded to this Section for processing.
This Section also prepares and certifies criminal records of persons arrested at the request of the Courts, District Attorney, Probation Department and other law enforcement agencies.
It also maintains the following files:
Fingerprint - Civil
Fingerprint - Criminal
Latent Fingerprints
Photographic Gallery

Fugitive Section

4.10 The Fugitive Section receives and records all warrants forwarded by Warrants Section for execution, executes same, and makes proper disposition of these arrested persons. Files, as detainers, warrants issued for persons already in custody. Makes necessary preparations in extradition and rendition cases and assists other authorities in the lawful apprehension and removal of persons wanted for crimes in other jurisdictions:

This Section maintains the following files:
Warrants (Felonies, Persons residing outside Suffolk, Persons wanted F.O.A.)

Special Crime Bureau

4.11 The Special Crime Bureau is responsible for coordinating the resources and personnel of the Narcotics Section, Homicide Section, and Crime Control Section to the successful completion of assigned criminal investigations that require special and prolonged investigations.
A. This Bureau is responsible for the immediate notification to the Chief of Detectives of occurrence of any of the following:
1. Murder, suspected murder, and non-negligent manslaughter.
2. Assault, where death is likely to result.
3. Robbery of unusual importance (banks, injury, etc.)
4. Major disasters.
5. Injury to a member of the Detective Division when serious.

Homicide Section

4.12 The Homicide Section assists the General Service Bureau in the investigation of deaths of human beings under circumstances requiring the attention of the Medical Examiner, as well as accidental or criminal acts, resulting in injuries to victims, which are likely to result in death. Maintains liaison with the Medical Examiner's Office.

Narcotics Section

4.13 The Narcotics Section investigates or assists the General Service Squads to investigate all narcotic

law violations. This Section maintains a liaison which exchanges information with federal, state, and all other involved agencies. Files and statistics of known illicit distributors, transporters, and known addicts are also maintained by this Section.

Crime Control Section

4.14 This Section is responsible to coordinate the resources and personnel of the Special Crime Units with the General Service Bureau on cases requiring the assistance of technical and complex investigations. They are available to respond to the immediate criminal investigative needs of the Special Crime Bureau and the General Service Bureau on assignment by the Chief of Detectives.

Robbery Unit

A. Robbery Unit investigates or assists the General Service Squad in the investigation of all major robberies occurring within Suffolk County and maintains such files as the Chief of Detectives deems necessary.

Auto Theft Unit

B. Auto Theft Unit assists the General Service Squads in the investigation of auto thefts, abandoned automobiles and lost or stolen registration plates. Cooperates with other agencies in the exchange of information concerning auto theft. Maintains the following files:

1. Auto Theft Data
2. Used Auto Parts Dealers
3. Known Auto Thieves

Arson Unit

C. Arson Unit assists the General Service Squads in the investigation of incendiary fires, fires

of undetermined origin, arson and false alarms of fires. Maintains files of known and suspected arsonists and pyromaniacs.

Lost Property Unit

D. Lost Property Unit maintains a reporting and checking system with pawn brokers, jewelers, old gold buyers and secondhand dealers concerning lost or stolen property. Checks all reports and bulletins which list lost, stolen, found and recovered property. Takes such further action as is necessary to locate and/or determine ownership of same. Forwards description of lost, stolen and found property to the following:

1. Nassau County Police Department
2. New York City Police Department
3. National Stolen Property File (FBI)
4. Other interested police agencies

Title

5.0 OPERATIONS DIVISION

Chief of Operations

5.1 The Chief of Operations exercises command over all personnel and activities of the Operations Division. He keeps the Police Commissioner informed of all important matters, and of any action taken pertaining to same.

T & M Bureau

5.2 The Transportation & Maintenance Bureau consists of the following Sections:

Vehicle Maintenance Section

A. The Vehicle Maintenance Section is responsible for the proper and efficient accounting for, maintenance of, and repair and disposition of all Department vehicles, as well as maintaining the necessary records

thereof. Maintains the Police Garage at Hauppauge and Westhampton for the purpose of making major repairs to Department vehicles. Through the Department of Purchase, County of Suffolk, New York, designates private service stations which will accomplish general repairs, lubrication, and maintain an adequate stock of supplies, materials and accessories necessary for the proper maintenance of motor equipment, which will be furnished by the Police Garage. Maintains Mobile Repair Units which perform on-the-street services, such as minor repairs, tuneups, and replacement of small parts and accessories, inspections of vehicles, winter and summer conditioning of vehicles. Maintains Department towtrucks for use in removing disabled police vehicles or other vehicles as authorized by the Chief of Operations. Maintains staff supervision of the repair and maintenance of Department aircraft. Assigns an identifying ''Fleet Number'' for each Department vehicle, which is used to identify the vehicle for servicing, repairing and gassing. Through the Department of Purchase, County of Suffolk, New York, designates locations as ''Gasoline, Oil and Anti-Freeze Dispensing Stations.''

Building Maintenance Section

B. The Building Maintenance Section is responsible for the proper and efficient maintenance and repair of all buildings and properties owned or leased by the District and maintaining the necessary records thereof. Maintains a Central Maintenance

Shop at Hauppauge for the purpose of making and repairing Police District building items and storage of supplies and materials used by building custodial workers.

Property Bureau

5.3 The Property Bureau supervises and is responsible for the operations of the Recovered Property Section and the Impound Section.

Recovered Property Section

A. The Recovered Property Section is the custodian of, and accountable for, all recovered property coming into the possession of a member of the Department, including, but not limited to, property; taken from a prisoner - stolen-embezzeled-alleged to or believed to have been feloniously obtained - acquired as evidence-lost-abandoned-left by deceased person - taken from persons believed to be insane, intoxicated, or otherwise incapable of taking care of themselves - coming into the custody of a court and by court order given into the custody of the Department. The Recovered Property Section acquires, safekeeps and disposes of all property in accordance witb the General Municipal Law, Personal Property Law, Vehicle & Traffic Law, Decedent Estate Law and the Abandoned Property Law of the State of New York.

Impound Section

B. The Impound Section is accountable for all property seized and held by the Police Department.

Supply & Procurement Bureau

5.4 The Supply & Procurement Bureau is responsible for the procurement of all equipment, supplies and materials, and all other sundry items

necessary for the operation of the Department through the Department of Purchase, County of Suffolk, New York. Maintains an inventory of all Department property and keeps the necessary records thereof.

Quartermaster Section

A. The Quartermaster Sections duties include the receipt, storage and distribution of all uniform wearing apparel and accessories.

Printing Section

B. The Printing Section will provide for the printing needs of the Department.

Armorers Section

C. The Armorer Section will repair, assemble and test firearms issued to the members of the Force: to test firearms and ammunition as directed; to provide ammunition and firearms as directed.

Pistol License Bureau

5.5 The Pistol License Bureau is responsible for the licensing and investigation of pistol permit applicants, pistol manufacturers, pistol dealers and gunsmiths.

Communications Bureau

5.6 Communications Bureau consists of two sections:

Technical Service Section

A. The Technical Service Section maintains telephone, teletypewriter, radio, call boxes, public address systems and other related communications equipment; keeps necessary communications records, maps, diagrams and plans for the communications needs of the Department and further development and improvement thereof.

Complaint Dispatching Section

B. The Complaint Dispatching Section receives and records all reports required to be entered at the Central Complaint Desk.

Aviation Bureau

5.7 The Aviation Bureau consists of the following Sections:

Aircraft Maintenance Section

A. The Aircraft Maintenance Section is responsible for the proper and efficient accounting for, maintenance of, and repair of all Department aircraft, as well as maintaining the necessary records thereof.

Aviation Flight Section

B. The Aviation Flight Section is charged with the enforcement of all laws and ordinances. Pilots assigned to the Aviation Section are responsible for the proper inspection and servicing of Department aircraft and perform such other duties as are necessary.

1. Pilots detailed to flight duty are in charge of and responsible for the proper conduct of each flight as well as for the safe handling and care of the Department aircraft to which assigned.

2. Pilots perform duties in accordance with the authorized duty chart provided for.

3. The Communications Bureau Duty Officer is authorized to assign any Flight Mission to render assistance in any emergency or disaster.

4. The aircraft pilot is the sole judge as to whether or not any unsafe condition cancels a flight and his decision cannot be countermanded by any officer regardless of rank.

Title

6.0 PERSONNEL DIVISION

Chief of Personnel

6.1 The Chief of Personnel exercises command over all personnel and activities of the Personnel Division.

He keeps the Police Commissioner informed of all important matters and of any action taken pertaining to same.

Personnel Bureau

6.2 The Personnel Bureau is responsible for the processing of Police and Civilian Candidates for employment.

Personnel Records Section

A. The Personnel Records Section processes the appointments of police candidates, leaves of absence, retirements, resignations and other terminations in accordance with law. Maintains the disciplinary record of all members of the Department. Completes the personal history and personnel forms of all members of the Department. Inspects documentary papers relating to birth, military record, marital status and education of all members of the Department.

Payroll Section

B. The Payroll Section is responsible for auditing and maintaining payrolls for all members of the Force, civilians, crossing guards and matrons.

Investigation Section

C. The Investigation Section conducts investigations into the background of all police and civilian candidates for appointment to the Police Department, County of Suffolk, N.Y. This unit performs other duties as prescribed by the Chief of Personnel.

Medical Section

D. The Medical Section - Medical Doctors assigned to the Medical Section are referred to as Police Surgeons, and render general medical

services to all members of the Force, and conduct medical examinations, and perform other duties as directed by competent authority. A Chief Surgeon may be designated from among the Police Surgeons, and is responsible to the Police Commissioner for the duties performed by each Surgeon and for reports and prescribed forms being properly filled out and forwarded.

Chaplains Section

E. The Chaplains Section - The Police Commissioner may designate Chaplains, one of whom may be designated Chief of Chaplains. A Chaplain has the assimilated rank of Inspector. He is authorized to visit precincts and department offices and to converse with any member of the Department. He visits the sick, injured and dying, and ministers to the spiritual welfare of the members of the Department. He is attired in the prescribed uniform, or in the clerical garb of the church to which he belongs, and wears the insignia of his office when appearing in official capacity upon any public occasion. He performs such other duties as may be assigned by the Police Commissioner.

Police Academy Bureau

6.3 The Police Academy Bureau conducts the instruction and training of all members of the department and maintains the following sections:

Recruit Section

A. Recruit Section - responsible for the training of police recruits as mandated under the Municipal Police Training Act of the State of New York.

organizational structure

In-Service Section

B. In-Service Section - responsible for the retraining of police officers and maintaining a supervisory school.

Firearms Section

C. Firearms Section - responsible for the annual firearms qualification of all MEMBERS OF THE DEPARTMENT.

Audio-Visual Section

D. Audio Visual Section is responsible for the development of Audio-Visual Training films pertinent to local and state laws and Departmental procedures.

Finance Bureau

6.4 The Finance Bureau handles and safekeeps all cash and accounts of the Department and assists in the preparation of the annual budgets of the Department.

Audits Section

A. Controls and records disbursements from the annual budgetary appropriations. Records disbursements of the Petty Cash Fund. Maintains the accounting records of all Department property. Prepares all accounting systems, which may be required by the New York State Department of Audit and Control or the Suffolk County Department of Audit and Control, such as, but not limited to: The revenue obtained from the issuance of Department reports to authorized persons.

6.5 The Central Records Bureau maintains the centralized filing systems of the department. In addition to maintaining a data processing unit, this bureau operates a Department Courier System designed to pick up, deliver and process U.S. Mail, material and Internal Correspondence.

organizational structure

Records Section

A. The Records Section performs follow-up examinations of every report received by them providing supervisory records control and adherence to Department policies and procedures. This section also maintains an accounting system relative to the receipt of photocopy and subpoena duces tecum fees.

Reports Section

B. The Reports Section collects, prepares and distributes monthly, annual and special statistical reports as required concerning personnel, budgetary accounting, and the location and frequency distribution of incidents and services reported and investigated by the department.

Warrants Sections

C. The Warrants Section maintains a record and control of all warrants issued to the department and distributes same to the proper commands for execution.

Revocations Section

D. The Revocations Section maintains liaison between the Department and the New York State Motor Vehicle Department relative to the recording and processing of revocation and suspension of drivers licenses and registrations.

Civil Defense Bureau

6.6 The Civil Defense Bureau acts as liaison between the Department and the Department of Civil Defense; it keeps the Department advised on all procedures, policies and training programs adopted by Federal, State and County Offices of Civil Defense. It also maintains a program of training volunteer auxiliary policemen to provide a maximum degree of protection in case of a disaster or national emergency.

organizational structure

Community Service Bureau

6.7 The functions of the Community Service Bureau are the administration and coordination of those activities involving increasing relationships between the Police Department, youth and the community at large. This Bureau will assist all Commands in establishing and maintaining the best rapport possible in matters relating to the public.

Youth Section

6.8 The Youth Section performs all required police services concerning persons under the age of sixteen (16) years, and maintains liaison with the Family Court and the Probation Department. Maintains files of juvenile offenders and youth gangs. Conducts follow-up investigations concerning missing persons under the age of eighteen (18) years.

Community Relations Section

6.9 The function of the Community Relations Section is to assist all Commands in insuring the best possible police-community relationships. It is responsible for observing and detecting any indications of either social unrest or riot potentials.

Speakers Section

6.10 The function of the Speakers Section will be to organize and coordinate all public lectures and appearances by members who act as representatives of this Department. Their responsibilities will include but are not limited to, schools (elementary and secondary), civic and fraternal organizations, community organizations, etc.

organizational structure

Police Athletic League Section

6.11 The function of the Police Athletic League Section is to coordinate and supervise the activities of the Suffolk County Police Athletic League, Inc.
A. It will be the responsibility of this Section to promote the principles of good sportsmanship and citizenship by encouraging participation in various sport programs, handicrafts and outdoor activities.

Title

7.0 PATROL DIVISION

Chief of District

7.1 The Chief of District is the Commanding Officer of the Patrol Division in the Suffolk County Police District. He keeps the Police Commissioner informed of all important matters, and of any action taken pertaining to the same. His office acts as liaison between this Department and the Board of Elections during all special and general elections. He assigns a security officer at Departmental trials.

Highway Patrol Bureau

7.2 The Highway Patrol Bureau consists of the following sections:

Engineering Section

A. The Engineering Section maintains statistics of all information pertaining to the orderly flow of traffic and cultures of accident scenes and high incident areas: conducts surveys for all traffic controls requested by municipal agencies.

Enforcement Section

B. The Enforcement Section is charged with the promotion of highway safety, the selective enforcement of vehicle and traffic laws by

motorcycle and radar use.

C. This Section also maintains technicians for breath test in D.W.I. arrests in addition to being charged with patrol of the Long Island Expressway.

Emergency Service Section

D. The duties of this Section include the handling, dismantling and disposing of bombs, explosives, suspicious packages, military ordinances and infernal machines. Develops evidence found at the scene of a crime in which an explosive substance was involved in order to determine the type of bomb and explosive ingredient used. This Section will also perform other duties as assigned by the Commanding Officer of Highway Patrol Bureau.

Marine Patrol Bureau

7.3 The Marine Patrol Bureau is charged with the operation of boats on the navigable waters under the jurisdiction of the Police District, and is further charged with the protection of persons and property on and adjacent to said waterways including islands therein, and the enforcement of all laws, regulations and ordinances.

Barrier Beach Section

A. The Barrier Beach Section renders service to the area of land that lies on the southern boundary of the Police District and is known as Fire Island, or the Barrier Beach. This island is approximately thirty-two miles long and varies one-half to one mile in width. Within this area there are several subdivisions that will not be patrolled by the Barrier Beach Section. These being the Robert Moses State Park, U.S. Coast Guard Installation, Incorporated Village of Ocean Beach, National Park Service areas, and the Suffolk County Park at Smith Point. Areas that will be patrolled include political subdivisions of both Islip and Brookhaven Townships.

Special Patrol Bureau

7.4 The Special Patrol Bureau consists of the following sections: Canine Section, Aviation Section and Courts Section.

Canine Section

A. The Canine Section consists of assigned members of the Force and specially trained dogs whose functions are:

Protection of life and property, prevention of crime, detect and arrest criminals, locate missing or wanted persons, control, care and the responsibility of their animals.

1. Each dog of the Canine Section is under the control of an assigned handler for care and responsibility both on and off duty.
2. Dogs when not on assignment are housed at the home of the assigned handler.
3. Handlers are responsible for the physical well being and humane treatment of the animals.
4. Handlers exercise utmost caution to ensure the safety of persons coming in contact with his dog. Vehicles assigned to handlers remain in their custody both on and off duty and prescribed Department maintenance procedures are observed.

Courts Section

B. The Courts Section acts as a liaison between the courts and the Police Department, providing the

scheduling of police officers for court appearance.

Truck Scales Section

C. The Truck Scales Section is responsible for the enforcement of all laws, in addition to those pertaining to commercial traffic, particularly the Vehicle and Traffic Law concerning overload violations.

Precinct Patrol Bureau

7.5 The Precinct Patrol Bureau consists of a number of precincts in the Police District, as deemed necessary, each of which is geographically defined and manned by personnel of the uniformed Force. It is the responsibility of the personnel to execute the Police mission within its given area.

1st Pct.

A. The First Precinct renders service to the political subdivisions of the Town of Babylon including the Incorporated Villages of Lindenhurst and Babylon.

2nd Pct.

B. The Second Precinct renders service to the political subdivisions of the Town of Huntington.

3rd Pct.

C. The Third Precinct renders service to the political subdivisions of the Town of Islip including the Incorporated Village of Brightwaters.

4th Pct.

D. The Fourth Precinct renders service to the political subdivisions of the Town of Smithtown and the Incorporated Villages of tne Branch and Lake Grove. Included in this Precinct area are certain border areas of the Towns of Huntington, Islip and Brookhaven.

5th Pct.

E. The Fifth Precinct renders service to the political subdivisions of

the Town of Brookhaven (south) and the Incorporated Villages of Patchogue and Bellport.

6th Pct.

F. The Sixth Precinct renders service to the political subdivisions of the Town of Brookhaven (north) and the Incorporated Villages of Old Field, Poquott, Belle Terre, Shoreham and Port Jefferson.

general regulations

Title

1.0 DUTIES & RESPONSIBILITIES

Police Mission

1.1 It is the duty of the Police Department, County of Suffolk to preserve the public peace, prevent crime, detect and arrest offenders, protect the rights of persons and property and enforce all laws and ordinances applicable to the county. The members of the Force are responsible for this police mission and constantly direct their best efforts toward the intelligent and efficient accomplishment of that end wherein the Police Department, County of Suffolk has jurisdiction.

Capacity For Duty

1.2 A member of the Force is to be fit for, and subject to, full duty at all times except when authorized to be absent or relieved of duty. Permanent physical or mental incapacity to perform police duties can be cause for dismissal from the Police Department, if such incapacitated member refuses or delays in voluntarily terminating his service.

Availability For Duty

1.3 A member of the Force leaves the telephone number of his residence or the telephone number of the location where he can be contacted with his commanding officer.

Respect

1.4 Members of the Force are respectful in their contact with superior officers and all other persons, within and without the Police Department and give their rank, name, shield number and command to any person who requests same.

general regulations

Decorum

1.5 Members of the Force directed to report to the office of any officer of this Department above rank of Lieutenant, or at the Department trial room, or to any Court or hearing within the County of Suffolk, New York, in regard to any departmental matter, does so in uniform, excepting members permitted to wear civilian clothing or as otherwise directed.

Confidential Dept. Business

1.6 A member of the Department treats as confidential the official business of the Police Department. He does not talk for publication, nor be interviewed, nor make public speeches, nor imparts information relating to the official business of the Department to anyone except:

Exceptions

A. Under due process of law
B. As directed by, or with the permission of, the Police Commissioner
C. As directed by the Rules and Procedures
D. As directed by Departmental Orders

Gratuities - Receipt of

1.7 Members of the Department do not ask for, receive, consent or agree to receive any emolument, gratuity or reward, or any promise of same, or any personal advantage; nor do they solicit, contribute, cause to be solicited, contributed or paid, directly or indirectly, any money or valuable offering; selling or giving of any tickets, objects or promises, by any group, or individual member of this Department is prohibited, except if authorized by the Police Commissioner. This does not apply

to membership dues or assessments, paid to authorized department organizations or for other authorized purposes.

Personal Recommendation

1.8 A member of the Department does not recommend or suggest to anyone the employment or name of any person, firm, partnership, company or corporation, or their representatives as attorney, counsel, bondsman, undertaker or funeral director, garage, service station or towing service; nor does any member inform any of the foregoing directly or indirectly of any details respecting any case or individual that are police matters, except that nothing herein contained is construed as restricting the rights of members of the Department in connection with the administration of their private affairs, or in prohibiting authorized official notifications in aided cases.

Payment Consent & Advise

1.9 A member of the Department does not consent to the payment by any person of money or any other valuable things to a pawnbroker, or to any other person, in order to regain possession of property stolen, nor does he advise such payment except by permission of his Commanding Officer.

Testimonial Dinners

1.10 A member of the Department is not given official sanction to accept testimonial dinners proposed to be tendered them for any purpose by any civic or other organization, body or individual, except by permission of the Police Commissioner.

Personal Advertisement

1.11 A member of the Department does not authorize the use of a photograph of himself in connection with any testimonial or advertisement of any commodity or commercial enterprise; nor does he, in his official capacity, endorse or subscribe any testimonial or advertisement; nor is he to authorize any mention to be made of his official title, rank or membership in the Police Department in connection with such testimonial or advertisement.

Services of Entertainers Etc.

1.12 A member of the Department neither employs, engages, solicits nor obtains nor causes to be employed, engaged, solicited, nor obtained, whether directly or indirectly, either with or without compensation, the services of any artist, entertainer or performer in connection with any dinner entertainment, or other function sponsored by the individual member of the Department, or organization, or group composed of or including members of the Department, without written permission of the Police Commissioner. Nothing herein is construed as restricting the rights of members of the Department in the regulation of their personal affairs, which are strictly private in nature.

Co-signing Prohibited

1.13 A member of the Department does not sign any note or other instrument as co-maker, guarantor, or endorser, for any money borrowed by any other member of the Department.

general regulations

Issuing Cards Shields, etc. 1.14 A member of the Force, individually, or representing a police organization, is prohibited from issuing to any person any card, shield, button or other device, without permission of the Police Commissioner.

Payment of Debts. 1.15 A member of the Department promptly pays just debts, and does not incur liabilities which he is unable or unwilling to discharge.

Interfer. with Citizens 1.16 A member of the Department does not unjustifiably interfere with, nor attempts to influence, the lawful business of any person.

Personal Business Cards 1.17 A member of the Department is forbidden to have, or to use, personal business cards of any description which would show his association with this Department.

Interview with Police Comm. 1.18 A member of the Department applies for an interview with the Police Commissioner through official channels in writing unless extenuating personal circumstances or the good of the department warrants direct contact with the Police Commissioner for permission.

Transfer of Information 1.19 Members of the Department, regardless of assignment or duty, cooperate with each other. When a member of the Department obtains information which may be of value to a unit other than his own, he reports the facts to his Commanding Officer, who transmits the information to the Command affected.

general regulations

Release of Confidential Information 1.20 An employee of the State of New York or the County of Suffolk Civil Service Commission, upon being properly identified, may be furnished with such information which, in the opinion of a superior officer, may be necessary to aid those Commissions. Information concerning applicants for positions in the Federal Service may be given to properly identified representatives of the United States Government.

Marching 1.21 A member of the Force in charge of other members, forms and marches in the manner prescribed in the United States Infantry Drill Regulations.

Title 2.0 EMPLOYMENT REGULATIONS

Outside Employment Authorization 2.1 A member of the Force devotes his entire time and attention to the service of the Police Department and does not engage in any other business or employment without the written permission of the Police Commissioner.

Outside Employment Reporting 2.2 When such permission is granted, it must be renewed annually. When such business or employment for which permission has been granted is terminated, the member must report this termination, in writing, to the Police Commissioner.

Employment while suspended 2.3 A member of the Force, when suspended from duty without pay, may engage in another lawful business or employment during the period of sus-

pension. He must keep accurate record of the amount of compensation which he may have earned in any other lawful business or employment and any unemployment insurance benefits he may have received during such suspension period.

Organization Membership

2.4 A member of the Force is prohibited from affiliating with any organization or body, the constitution or regulations of which would in any way exact prior consideration and prevent him from performing police duty nor can he join in any Federal or State military organization without the written permission of the Police Commissioner.

Political Affiliation

2.5 The right of every member of the Force to entertain political or partisan opinion and to express the same freely when such expression does not concern the immediate discharge of his official duties, and also the right of the elective franchise is deemed sacred and inviolate, but no member of the Force is permitted to be a delegate or representative to, or take active part in any movement for the nomination or election of candidates for political office. Upon the days of election for public offices, held under the laws of the State, he, whether specially assigned to attend the polls or otherwise, does all in his power to preserve the peace, protect the integrity of the ballot box, enforce the rights of lawful voters, and prevent illegal and fraudulent voting.

POLICE DEPARTMENT, COUN OF SUFFOLK, N.Y.
PDCS-2008

ORDER NUMBER 74 - 15

"Y" Aug., 1974 | "Police Commissioner

DISTRIBUTION: ☐ ☐ ☐ ☒

Effective immediately Chapter Two of the Rules and Procedures is amended as follows:

N.Y.S. Drivers License

2/1.22 A member of the Department will maintain a validated N.Y.S. Drivers License. Any member not possessing such a license, for any reason, will notify his Commanding Officer immediately in writing.

Election Law

A. Section 426 as set forth in Election Law, relative to police and political activities, governs the personnel of the Force. This Section of law reads as follows: ''S 426 Misdemeanors concerning police commissioners or officers or members of any police force. Any person who, being a police commissioner or an officer or member of any police force in this State:

Laws

1. Uses or threatens or attempts to use his official power or authority, in any manner, directly or indirectly, in aid of or against any political party, organization, association or society, or to control, affect, influence, reward or punish, the political adherence, affiliation, action, expression or opinion of any citizen; or,

Laws

2. Appoints, promotes, transfers, retires or punishes an officer or member of a police force or asks or aids in the promotion, transfer, retirement or punishment of an officer or member of a police force, because of the party adherence or affiliation of such officer or member, or for or on the request, direct or indirect, of any political party, organization association or society, or of any officer, member of committee or representative official or otherwise of any political party, organization, association or society; or,

Laws

3. Contributes any money, directly or indirectly, to, or solicits, collects or received any money for, any political fund, or joins or becomes a member of any political club, association, society or committee, is guilty of a misdemeanor.''

Civil Service Grievance

2.6 A member of the Force is not deprived of the right of appeal to the Legislature or to any public official, board, commission or other public body, for the redress of grievances on account of employment in the Civil Service of the County of Suffolk. A member of the Force before availing himself of this privilege, first submits to the Police Commissioner, in writing, a copy of the papers containing the subject matter of such appeal.

Legal Action Institution of

2.7 A member of the Force is not deprived of the right to institute legal action against a third party. Whenever such action would involve this Department, in any manner, said member is to advise the Police Commissioner, in writing, prior to the commencement of such action.

Social Status Change

2.8 A member of the Department resides within the limits of Suffolk County, New York, except as prescribed by law. He notifies the Personnel Records Section immediately whenever there is any change in his marital status, telephone number, residence and/or dependants.

Employee Withholding Certificate

2.9 When a payroll change is to be made regarding Federal and State withholding taxes a Federal Employees Withholding Certificate is forwarded to the Personnel Bureau, Payroll Section.

general regulations

Personal Property Law

2.10 A member of the Force is not considered as a ''Finder'' as outlined under the provisions of the Personal Property Law, Article 7B., of the State of New York. Property of any type coming into a member's possession while in the performance of a police duty is processed in accordance with the Rules and Procedures and special procedures as outlined by the Property Clerk, Police Department, County of Suffolk, by that member.

Jury Duty

2.11 A member of the Department who receives a notice to appear for examination as to his qualifications as a juror, promptly forwards such notice to the Personnel Records Section who returns the notice by mail with an attached letter certifying that the person named in the notice is a member of the Police Department.

Retirement Notification

2.12 Members of the Force must notify the Police Commissioner in writing prior to the time such members file for any type of retirement with the New York State Employees' Retirement System.

Liability Against County

2.13 A member of the Department does not incur any unauthorized liability, chargeable against the county.

Liability Admission of

2.14 A member of the Department does not admit any liability of the Police Department, County of Suffolk, New York, or any other governmental jurisdiction, nor does he make any

general regulations

recommendations as to the collection of claims, except as specifically provided herein. This applies, but is not limited to, formal, informal, oral or written admissions. The term admissions includes, but is not limited to, direct statements affixing responsibility or any statement, in any form which could be used in any legal proceedings against the Department or any other governmental jurisdiction.

Legal Actions to County Attorney

2.15 A member of the Department who becomes involved in an injury or damage case in any manner, upon request, advises the person involved to write a letter or go in person to the Office of the County Attorney, Suffolk County, New York, setting forth his claim.

Grooming Standards

2.16 Members of the Force will be neat and clean at all times while on duty. Male personnel will comply with the following grooming standards unless excluded by the Police Commissioner due to special assignments:

Hair

A. Hair will be neat, clean, trimmed, and present a groomed appearance. Hair will not touch the ears or the collar except the closely cut hair on the back of the neck. Hair in front will be groomed so that it does not fall below the band of properly worn headgear. In no case will the bulk or length of the hair interfere with the proper wear of any authorized headgear.

Sideburns

B. If a member chooses to wear sideburns, they will be neatly

trimmed and tapered. Sideburns will not extend below the lowest part of the exterior ear opening, will be of even width (not flared), and will end with a clean-shaven horizontal line.

Mustaches C. A short and neatly trimmed mustache may be worn, but will not extend over the top of the upper lip or beyond the corners of the mouth.

Beards D. The face will be clean-shaven other than the wear of the acceptable mustache or sideburns. Beards and goatees are prohibited, except where a Police Surgeon grants a waiver for the wearing of a beard for medical reasons with the approval of the Police Commissioner. When a Surgeon prescribes that a member not shave, the beard will be kept trimmed symmetrically and all beard hairs will be kept trimmed so that they do not protrude more than one-half inch from the skin surface of the face.

Wigs E. Wigs or hair pieces will not be worn while on duty in uniform except for cosmetic reasons to cover natural baldness or physical disfiguration. If under these conditions, a wig or hair piece is worn, it will conform to department standards.

Title **3.0 RANK, TOURS, AND ASSIGNMENTS**

Order of Rank 3.1 The order of rank in the Force is as follows:

A. Chief of Detectives
B. Chief of District

C. Chief of Personnel
D. Chief of Operations
E. Deputy Chief of Detectives
F. Deputy Chief of District
G. Deputy Chief of Personnel
H. Deputy Chief of Operations
I. Deputy Chief Inspector
J. Inspector
K. Deputy Inspector
L. Captain

L. Lieutenant
M. Sergeant
N. Patrolman
O. Policewoman

Seniority 3.2 Seniority in the Force is determined:
First - by rank
Second - by continuous service in rank
Third - by date of appointment to previous rank or ranks
Fourth - by date of appointment to Department
Fifth - by date of birth.

Delegation of Authority 3.3 Orders of the members of the Force assigned to the Office of the Police Commissioner, Office of the Chief of Detectives, Office of the Chief of Operations, Office of the Chief of Personnel, or Office of the Chief of District, when so directed, are deemed to be the orders of such members' superior and are promptly obeyed as such.

Orders of Superiors 3.4 Members of the Force promptly obey all lawful orders, instructions directions and requests of superior officers.

general regulations

POLICE DEPARTMENT, COUN. OF SUFFOLK, N.Y.
PDCS-2008

ORDER NUMBER 73 - 5

26 June, 1973 | Police Commissioner

DISTRIBUTION:

Chapter 66 of the Laws of 1973 has amended the Civil Service Law by eliminating the distinction between Police Patrolman and Policewoman. The position classification shall be known as Police Officer.

Therefore, effective immediately, all references to former classifications of Police Patrolman and Policewoman are deleted from the Rules and Procedures and all other Departmental forms and publications. In their place the position classification of Police Officer will be used.

By necessity, these changes will be accomplished on a phase out basis on all printed material.

general regulations

Chaplains

3.5 Chaplains of the Department who have the simulated rank of Inspector, or Chaplains of the authorized departmental organizations, are treated with the courtesy and respect of their rank. Chaplains are authorized to visit departmental buildings, and to converse with any member of the Department. They visit the sick, injured or dying, and minister to the spiritual welfare of the members of the Department.

Assignment by Police Commissioner

3.6 A member of the Force or Department is detailed or assigned as directed by the Police Commissioner.

Transfer - Application For

3.7 A member of the Force makes application for a desired change of detail or assignment to the Police Commissioner through official channels, typewritten on official designated forms. The member does not permit anyone else to do so, for, or in his behalf.

Tours of Duty

3.8 A member of the Force performs the tours of duty prescribed by the Police Commissioner, and as indicated by the Duty Charts. All members of the Force report for duty in accordance with Duty Charts, or as otherwise directed.

Meal Period

3.9 A member of the Force is excused for a thirty (30) minute meal period during each tour of duty.

general regulations

Title	4.0 DEPARTMENT COMMUNICATIONS SYSTEM
Answering Procedure	4.1 Members of the Force, when called to any departmental communication system except radio, promptly respond by giving the command to which attached, rank and surname. The member calling promptly identifies himself in the same manner.
Communication Bureau Answering Procedure	4.2 Members of the Communications Bureau when answering telephone complaints from the public promptly respond by giving their rank and shield number only.
Use of Communication System	4.3 So far as possible, departmental business is transacted by means of the departmental communications systems, or as otherwise directed.
Teletype Authority For	4.4 Teletype authorization will only be accepted from a member of the Detective Division or any member of the Police Department holding the rank of Sergeant or above unless otherwise directed by the Police Commissioner.
Canceling	A. The teletype message or other alarm is canceled only by the authority of the originating member or his command.
Notifications	B. Said member and/or command is then responsible to promptly notify the Communications Bureau to cancel the teletype message or other alarm.
Supplementary Report	C. Said member and/or command is then responsible to promptly notify the command responsible for the case investigation by phone and forward a Supplementary Report copy as required.

general regulations

Title	5.0 MISCELLANEOUS REGULATIONS
Smoking in Uniform	5.1 A member of the Force does not smoke in public while in uniform, unless he is in a department vehicle, or in a restaurant during meal period, or in offices and rooms of a Police Building which are not normally open to the public. Smoking may also be permitted at such times as authorized by a superior officer. All such smoking shall be done in a discreet manner.
Intoxicants Consumption Of	5.2 A member of the Department does not indulge in intoxicants while in uniform. A member not required to wear a uniform and a uniformed member while out of uniform does not indulge in intoxicants to an extent unfitting him for duty.
Intoxicants Possession Of	5.3 A member of the Department does not bring, or permit to be brought, any intoxicant into a departmental building, booth, vehicle, aircraft or boat, except in the performance of police duty, or when required for prompt administration under the personal direction of a physician.
Intoxicants in Premises With	5.4 A member of the Force does not enter while in uniform, any premises which are used for the manufacture, storage, shipping or sale of intoxicants, except in the performance of a police duty or for the purpose of eating a meal in a duly licensed hotel or restaurant.

general regulations

Games of Chance on Duty

5.5 A member of the Department does not indulge in games of cards or chance while on duty.

Association with Criminals

5.6 No member of the Force is to associate or fraternize with persons known to have been convicted of any misdemeanor or felony under the laws of this state or any similar conviction under the laws of any other state or under the Federal Law. A conviction under this rule shall not mean a conviction for any offense under the Vehicle and Traffic Law or a violation of an ordinance of a political subdivision of this state.

Bombs Handling Of

5.7 A member of the Force does not handle, dismantle or dispose of any bomb, explosive or suspicious package liable to contain any bomb or explosive unless he is an assigned member of Arson Bomb unit or under their immediate supervision and direction.

Rules & Procedures Familiarization with

5.8 A member of the Department is to study these Rules and Procedures, as well as other manuals that apply to his assignments, and thoroughly familiarize himself with the applicable provisions.

A. He is held responsible for maintaining these Rules and Procedures, as well as other manuals that apply, by keeping them up to date with such amendments that may be provided from time to time and in the prescribed manner.

general regulations

Rules & Procedures Enforcement

5.9 Division commanders, commanding officers and supervising officers are responsible for the enforcement of these Rules and Procedures and all authorized orders. They are also responsible for the critical supervision of their subordinates and their strict compliance to these Rules and Procedures and all authorized orders.

Title

6.0 LEAVING POLICE JURISDICTION —SEE ATTACHED—

Permission to leave County

6.1 A member of the Department does not leave the County on police business except by the authority of his superior officer or while engaged in close pursuit.

Notification-leaving County

6.2 A member of the Department who leaves the County in a department vehicle must notify the Communications Bureau as to rank, name, shield number, command, destination and vehicle identification number. Such notification is also made upon the members return.

Leaving County in Uniform

6.3 A member of the Force while on duty, does not leave the County in uniform in any event, except in close pursuit, extreme police emergency, or as otherwise directed by a superior officer.

Title

7.0 DEPARTMENT FINANCIAL OBLIGATIONS

Expense Vouchers

7.1 Expenses involved in traveling on official business are itemized on

claim vouchers provided by the Finance Bureau.

Petty Cash

7.2 Authorized purchases under $10.00 are paid from a Petty Cash Fund.

Purchase Authorization

7.3 All other purchases must first be authorized by the Supply and Procurement Bureau.

Receipt for Tolls

7.4 Any member, while traveling on official county business, who pays an individual toll of $1.00 or more, must obtain a receipt for this toll and attach it to his expense voucher in order to be reimbursed.

Application of Attendance

7.5 A member of the Department completes and submits an Application of Attendance at Conference form, (obtainable from the Finance Bureau), to the Police Commissioner three weeks prior to the start of the conference. This also applies to conventions and schools. The leave of absence form is not required in these instances.

Gas Credit Card

7.6 A member purchasing gasoline on a credit card must submit the paper copy he receives to the Finance Bureau, via courier, on a daily basis. Purchasing gasoline for any department vehicle by means of a credit card within Suffolk County is prohibited except:

Regulations

A. If on an emergency call, search, etc., and the vehicle or vehicles involved have insufficient fuel to respond to a department's gasoline dispensing station, the operator is

permitted to make a one-dollar purchase which will give him sufficient gasoline to travel to said dispensing station.

B. All scooter units continue to get gas at authorized stations. Any emergency gasing which exceeds the one-dollar specified must be explained by the operator on internal corresponderce submitted to the commanding officer, Transportation and Maintenance Bureau through channels with endorsement by the operator's commanding officer.

Vehicles assigned to leave Suffolk County must be completely fueled prior to departure. Normal travel to Nassau County or New York City should not require fueling outside Suffolk County unless assignment requires extensive travel in that area.

Telephone Credit Card Section

7.7 Telephone credit cards are issued to specific personnel within the department to be used in the performance of police business only. A member of the department transferred to a command authorized to use telephone credit cards will be issued a card upon written request of his Commanding Officer to the Commanding Officer of the Communications Bureau. Any member of the department holding a police telephone credit card is responsible for its proper use. The credit card is to be used for police business only and then only when the use of the departments' telephone facilities is unfeasible. A member of the department holding a police telephone credit card who is transferred to a

command not authorized to use telephone credit cards will turn his credit card into the Commanding Officer of the Communications Bureau immediately upon his effective transfer date. A member of the department holding a telephone credit card who loses possession of said card either through loss or theft will notify the Commanding Officer of the Communications Bureau immediately, indicating the circumstances surrounding its loss/theft. Indiscriminate use of the telephone credit card by any member of the department will subject the holder to investigation and said abuses will have to be explained in detail. All members of the department are to be guided by chapter 2/2.13 in the use of the telephone credit card.

Travel Arrangements

7.8 Arrangements for reservations, tickets for air or rail travel and for advance reservations of rental cars, are authorized only as follows: Personnel of the Detective Division makes such arrangements through the Main Office Administrative Section Lieutenant, who is responsible for proper notification to the Finance Bureau. All other department personnel make such arrangements through the Finance Bureau. Vouchers for payment of such claims will not be approved unless this procedure is adhered to, and are in accordance with requirements set forth by the Commanding Officer of the Finance Bureau.

Title

8.0 NEWS MEDIA.

Press - Release of Information

8.1 A representative of the Press, upon establishing his identity, may be advised of the current news if the ends of justice are not thereby defeated or laws violated.

Policy

8.2 It is the policy of the Department to assist newspapers, radio, television and other news media to gather news information.

Impartiality

8.3 Every effort is made to release current information without partiality. Information is not withheld or delayed in order to favor any particular news media representative or agency.

Press Cards

8.4 Authorized news media representatives are issued press cards by the Department. When not known, they are required to identify themselves by this means. The press cards issued by the Police Departments of the City of New York and Nassau County are acceptable by this Department as authorized news media representative identification.

Authority for Release of Information

8.5 Information may be released by the officer in charge of an investigation or other incident involving the police. He imposes restrictions on access to the crime scene or the release of information by subordinates when he believes it necessary for the success of the investigation. Information concerning investigations or other police incidents is

withheld only when the release of names of suspects, undeveloped leads, or other such information would jeopardize the successful conclusion of the investigation or proper handling of the incident. Members of the Department will seek the cooperation of news media representatives in such matters.

Information from Central Records Bureau

8.6 Information released from the Central Records Bureau is only released as outlined in the procedures applying to that Bureau.

Duty Officer Notification

8.7 The Duty Officer at the Communications Bureau is informed of all newsworthy data as is practical and as outlined in paragraph 2 8.5 (for release to the news media).

News Media Violations

8.8 When news media representatives refuse to cooperate or violate an agreed-upon confidence, the incident is reported to the Police Commissioner.

Title

9.0 FIREARMS

Reporting Responsibilities

9.1 Members of the Force must report in-writing on designated forms immediately to the Personnel Records Section all concealable firearms owned, or possessed by them. The Personnel Records Section makes proper entries in the member's Force Record. and returns a certified copy of the form to the reporting member to verify compliance with this rule.

Notification of Change

9.2 Members of the Force who sell, give away, or dispose of any concealable firearm, immediately notify. in writing, the Personnel Records Section on the designated forms. This report must contain sufficient information and facts to properly identify firearm and vendee. A certified copy of the form is returned to the reporting member to verify compliance with this rule.

Licensed Dealers

9.3 Members of the Force who are duly licensed gun dealers and who have written permission from the Police Commissioner on the prescribed form (Outside Employment) as part of their Force record only report those firearms issued to them and/or personally owned by them.

Firearms - Use Of

9.4 Members of the Force must be proficient in the use and handling of their service revolver and other designated firearms.

Firearms Qualification

9.5 Periodical qualification is scheduled by the Police Academy to determine the proficiency of each member of the Force and departmental recognition is awarded dependent upon the degree of qualification as directed by the Police Commissioner. The current firearms qualification record is filed in the member's Force Record.

Firearms- Discharge of

9.6 A member of the Force who discharges a firearm, except at an authorized range, promptly notifies the Desk Officer of the Precinct of occurrence or the Duty Officer, Communications Bureau, The Desk Officer or Duty Officer notifies a supe-

rior officer who causes an immediate investigation of the cause and effect of such discharge and the results of such investigation are forwarded as a certified report to the member's Division Commander thru channels. An appropriate Daily Journal entry concerning such notification is made by the receiving Desk Officer where applicable. When the aforementioned incident occurs outside of the County of Suffolk, the member promptly notifies the local police department and telephones the Communications Duty Officer, Police Department, County of Suffolk who causes the required investigation to be made upon the member's return.

Authorized Use Responsibility

9.7 Authorized Use of Firearms.
A. The responsibility for any use of a firearm is borne by the member of the Department who fires same in violation of existing statutes and or these Rules and Procedures.

Sec. 35.30 P.L.

B. Section 35.30 lists the circumstances under which deadly physical force may be used by a peace officer. Members of the Force are to read and become familiar with this section.

Firearms Aboard Aircraft

9.8 Members of the Force will abide by the following procedures concerning the carrying of loaded or unloaded firearms aboard commercial aircraft:

Routine Assignments

A. If the member is on an assignment not specifically requiring that he carry a firearm (such as mere transportation to the assignment) he will, prior to boarding, identify himself to a responsible representative of the air carrier by displaying his credentials. He will advise the representative that his mission does not require a firearm on his person during the flight and he will comply with the instructions and procedures of the air carrier regarding the safe keeping of his firearm during flight.

Non-Routine Assignments

B. If the assignment is of the nature that makes it necessary for the member of the Force to be armed he will, prior to boarding, identify himself to a responsible representative of the air carrier, i.e., the duty supervisor in charge of the passenger counter, or the duty supervisor in charge of passenger service in the case of larger stations, or the station manager or acting station manager in case of smaller stations. He will then notify the representative that his mission requires him to carry a loaded firearm aboard the aircraft. He is not required to explain the details of his assignment but should provide the information required for confirmation such as name and phone number of his Commanding Officer.

Mace Prohibited

C. A member of the Force will not carry mace, tear gas, or similar devices aboard aircraft.

Air Security Notifications

D. A member of the Force will inquire if any FAA Air Security Specialists are to be aboard and if so advise the airline representative to notify such specialists of his seat location.

Hi-Jacking Attempts

E. A member of the Force is to take no action during a hijacking attempt

unless requested to do so by the Captain of the aircraft.

- SEE ATTACHED -

Title **10.0 FOREIGN AMBASSADORS**

Diplomatic Immunity

10.1 Ambassadors and Ministers, accredited by foreign governments as their representatives, members of embassies and delegations in Washington D.C., and members of delegations to the United Nations have diplomatic immunity. They are not liable for punishment in this state. This immunity extends to their families and to their staffs. These diplomats possess identification cards containing their name, title, country represented and their photograph. The cards are signed by the Secretary of State of the United States and by the Chief of Protocol of the State Department.

Courtesies Extended

10.2 Members of the Force extend every courtesy to such persons, their families and employees on official business. They are not arrested, summoned or their vehicles tagged. They are not detained once their identification is satisfactorily established. The same consideration is granted to consuls and vice consuls of foreign nations, although they are not issued identification cards by any governmental agency of the United States. As an aid to their identification, it is noted that the Bureau of Motor Vehicles of the State of New York issues automobile registration plates bearing the letters "F C" preceded by a numeral or numerals, for vehicles owned or used by foreign consuls. However, all consuls entitled to immunity may not have such plates due to the limited number available. Similarly, all registration plates bearing the letters "D P L" indicate issuance for automobiles owned or used by members of delegations to the United Nations, or other representatives of governments, who are accorded diplomatic immunity.

Procedure in Lieu of Arrest

10.3 Instead of arrest or summons, the officer obtains the name and title of the person and the name of the government represented, or in the case of a parking violation, the license number of the vehicle, and reports the incident to his Commanding Officer. The Commanding Officer reports the incident to the Commissioner in duplicate, direct. If other than a parking violation, the member concerned immediately reports the details of the incident to the Desk Officer of the Patrol Precinct of occurrence who, without delay, notifies the Chief of District. Notifications are made when the person possessing diplomatic immunity is the victim of a crime, is involved in a motor vehicle accident or is directly involved in any incident of a police nature.

Identification Determined

10.4 A member of the Force having occasion to resolve a question of identity or status of an individual claiming to be a foreign representative or claiming diplomatic immunity, promptly telephones the Duty Officer or Chief of District from

the scene of occurrence. if possible Such a person claiming diplomatic immunity is not brought into the Precinct house merely for the purpose of identification. The member of the Force is guided by whatever instruction received regarding his inquiry. Members of the Force afford any necessary protection to, and expedite the movement of members of, delegations to the United Nations, officials of the United Nations, their families, accredited representatives of the press and others having official business.

State Dept. Listing

10.5 A Minister or an Ambassador is required to file with the State Department a list of the members of his staff, his employees and servants. A copy of this list is filed with the United States Marshall in the District of Columbia. Police Departments concerned with a problem of the identification of an individual may consult the Marshal when in doubt.

Title

11.0 SPEEDOMETER CALIBRATION

Monthly Testing

11.1 The speedometers of the Suffolk County Police Department vehicles assigned to the patrol force are tested and calibrated monthly. Vehicles are tested and calibrated by use of the Trackmeter Testing Wheel or the F.W. Stewart Speed Comparator. Model 6X900, or 150-PS Clayton Speedometer.
The Trackmeter Testing Wheel is a fifth wheel device that is attached to the rear bumper of the vehicle

tested. Revolutions of the wheel activate a direct current generator creating voltage that is registered on a voltmeter in miles per hour calibration.
The F.W. Stewart Speed Comparator Model 6X900 is a device which is connected to the speedometer of the vehicle. Accuracy of instrument is verified by stroboscopic test.

Tests By Highway Patrol Bureau

A Tests are conducted by the Highway Patrol Bureau personnel competent to perform such tests and in the presence of the operator of the vehicle

Speedometer Card

B. The testing officer issues a speedometer card, in triplicate, having recorded thereon the vehicle speedometer readings and miles per hour calibrations made during the test; each counterpart is dated and attested to by the testing officer and the operator of the vehicle, identifying the vehicle by radio call number, fleet number, year of manufacture and make. One triplicate original thereof is filed in the Highway Patrol Bureau; one triplicate copy is retained by the command to which the vehicle is assigned; and the third triplicate copy remains in the vehicle.

Motorcycle Speedometers

C. Motorcycle speedometers are to be tested and calibrated monthly using either the F.W. Stewart Speed Comparator or testing may be accomplished by the commercial speedometer testing station designated by the Commanding Officer of the Highway Patrol Bureau on authorization of the Department of Purchase of

Suffolk County. A certificate of accuracy is obtained in duplicate original for each test;each counterpart is dated, identifying the motorcycle by radio call number, fleet number, year of manufacture and make. Each counterpart is signed by the operator and by the individual making the test. One duplicate original is kept in the files of the Highway Patrol Bureau. The other duplicate copy is kept at the speedometer testing station, except that where testing is accomplished by the Highway Patrol Bureau using the F W Stewart Speed Comparator both duplicates are filed at the Highway Patrol Bureau

Title **12.0 VICE, GAMBLING & DRUGS**

Responsibility to Suppress

12.1 It is the responsibility of all members of this Department to take every lawful means to suppress all forms of commercialized vice, gambling and the illegal use and distribution of drugs. All information concerning these hazards as well as any information concerning alleged narcotic addicts is forwarded on internal correspondence to the Chief of Detectives.

Narcotic Addict Commitment

12.2 Any member of the Department who is approached by any person requesting information as to how they could apply, (under the provisions of the New York State Mental Hygiene Law- Article 9 and in a non-criminal involvement), for an order directing a civil commitment of such person,

(a possible or alleged narcotic addict), to the care and custody of the Narcotic Addiction Control Commission, does as follows:

Record A. Notes the name, address and age of the person for whom such civil commitment is being requested.

Direct B. Advises the person to call 727-0400 # 470 Supreme Court, Riverhead, Monday thru Friday, 0900 to 1700 hours for an apoointment.

Submit C. Submits the noted information on internal correspondence to his commanding officer for direct forwarding to the Chief of Detectives.

NACC CR-1 Forms

12.3 NACC CR-1 forms are available at all detective squad commands This form is not to be used in non-criminal involvement. This form is only used when a person is arrested, shows symptoms or otherwise appears that he is a narcotic addict, and is charged with any felony or misdemeanor or the offense of prostitution.

Responsibility of Detective Division

12.4 The Detective Division is responsible for, but not limited to, the investigation of all felonies and all sex and gambling offenses. This responsibility does not preclude the Detective Division or the Patrol Division from mutually assisting each other.

Title **13.0 FINGERPRINTS**

Responsibility

13.1 The responsibility for the taking of fingerprints is as follows

Detective Division

A. Detective Division - in all criminal cases being handled by the Detective Division.

Patrol Division

B. Patrol Division - in all criminal cases being handled by the Patrol Division. To facilitate the taking of fingerprints, the Detective Division and the Patrol Division render such assistance and cooperation to each other as may be warranted.

Title

14.0 CODE OF ETHICS

County Charter

14.1 Code of Ethics - Suffolk County Charter.

Conflict of Interest

14.2 No officer or employee of the County of Suffolk, whether paid or unpaid shall

A Be or become interested directly or indirectly in any manner whatsoever except by operation of law, in any business or professional dealings with the County of Suffolk or any agency thereof.

B Act as attorney, agent, broker, representative or employee in business or professional dealings with the County or any agency thereof for any person or corporation in which he has a direct or indirect interest.

C Accept other employment or engage in any business transactions or make any investments directly or indirectly which create a conflict with his official duties.

D. For the purpose of this Code of Ethics "interest" shall be deemed to include the affairs of: the officer's or employee's spouse, minor children and dependents; a firm, partnership or association in which such officer or employee is a member

or employee; a corporation of which such officer or employee is an officer, director or employee and a corporation any stock of which is owned or controlled directly or indirectly by such officer or employee.

E. Notwithstanding any provision to the contrary in this article, any person serving the County or any agency thereof without compensation shall not be deemed to be in violation of this article unless such interest is in conflict with the proper discharge of his official duties.

F The provisions of this section shall not apply to the designation of a bank or trust company as a depository, paying agency, registration agent or other investment in funds of the County in which the municipal officer or employee has an interest by reason of stock holdings when less than 5 percentum of the outstanding stock of the corporation is owned or controlled directly or indirectly by such officer or employee except when the Chief Fiscal Officer, Treasurer or his Deputy or employee has an interest in such bank or trust company.

G The provisions of this section shall not apply to the designation of a newspaper including but not limited to an official newspaper for the publication of any notice, resolution, ordinance or other proceeding where such publication is required or authorized by law.

H No conflict shall be deemed to arise under this local law by virtue of stock ownership where such ownership constitutes less than five (5%)

per cent of the outstanding stock of the corporation involved.

Gratuities 14 3 No officer or employee of the County of Suffolk, whether paid or unpaid, shall accept any gift or gratuity, whether in the form of services, loan, or any promise or benefit of any kind, from any person, firm or corporation which is interested directly or indirectly in any manner whatsoever in any business or professional transaction or dealing with the County or any agency thereof. The receipt of a gift of an inconsequential nature shall not be deemed a violation of this section.

Interests 14.4 Any officer or employee, of Suffolk County, whether paid or unpaid who has, will have or intends to acquire an interest direct or indirect in any matter being considered by the Board of Supervisors or by any other official board, agency, officer or employee of Suffolk County, and who participates in discussion before, or gives opinions or advice to any board, agency or individual considering the same, shall publicly disclose on the official record the nature and extent of such interest.

A. Any officer or employee of the County of Suffolk, whether paid or unpaid, who has knowledge of any matter being considered by any board, agency, officer or employee of the County of Suffolk in which he has or will have or intends to acquire any

direct or indirect interest, shall be required to disclose in writing his interest to such board, agency, officer or employee and the nature and extent thereof.

Confidential Information 14.5 No officer or employee of the County of Suffolk, whether paid or unpaid, shall disclose confidential information concerning the property, government or affairs of the County or any other confidential information of an official character except then required by law, nor shall he use such information to advance the financial or other private interests of himself or others.

Future Employment 14.6 No person who has served as an officer or employee of the County of Suffolk shall, with respect to any case, proceeding, application or matter which was pending before the board, agency or department while he was serving as an officer, or employee of the County, within a period of two (2) years after the termination of such service or employment, appear before any board or agency of the County, act as counsel, attorney or agent, nor receive any compensation or association; nor shall he aid in any manner.

A. No person who has been elected to a County Office, may, resign prior to the completion of his term of office and be employed by the County, accept a County position, or be retained by the County in any manner to any office or position for a period of two (2) years from the date of the creation or establishment of the office or position.

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general regulations

Penalties

14.7 Any contract willfully entered into by or with Suffoll County or any agency thereof in which there is an interest prohibited by this local law shall be null, void and wholly unenforceable.

A. A violation of any of the provisions of this local law shall constitute cause for forfeiture of pay, suspension, removal from office, discharge of employment in the form and manner as provided by law.

B. In addition to any of the foregoing penalties any officer or employee who willfully and knowingly violates the foregoing provisions of this article shall be guilty of an offense punishable for a term of imprisonment not in excess of one (1) year and/or a fine not in excess of Five Hundred ($500.00) Dollars.

-SEE ATTACHED-

uniforms and equipment

Title — **1.0 PRESCRIBED UNIFORM**

Prescribed Issue Only

1.1 Members of the Force wear at all times while on duty the uniform and articles of equipment as prescribed by the Police Commissioner unless otherwise directed.

Uniform Detectives Plainclothes

1.2 Members of the Force detailed to detective and/or plainclothes duties are members of the uniformed force and as such maintain all uniform clothing and articles of equipment as prescribed for their rank.

Uniform of the day

1.3 The Police Commissioner establishes the uniform of the day by the promulgation of special orders to this effect. Division Commanders are authorized to direct members of the Force to wear the required class uniform necessary for the member's function within their respective divisions.

Cleanliness

1.4 The uniform is maintained in a neat, clean and serviceable condition and no part thereof is worn at any time in conjunction with civilian clothing.

Color of Socks

1.5 Black socks are worn in conjunction with the uniform of the day.

A. A member of the Force may be excused from wearing black socks with the uniform of the day if he has a physician's written statement certifying that he be permitted to wear white socks because of a medical reason filed in the member's Force Record.

uniforms and equipment

Class ''A'' Summer

1.6 Class ''A'' Uniform

A. Summer Uniform

1. Sergeant and Patrolman - Blue short sleeve shirt, trousers, black shoes, eight point cap and rainwear for inclement weather.

2. Lieutenant and above - white short sleeve shirt, trousers, black shoes, eight point cap and rainwear for inclement weather.

NOTE: Black tie and blouse permissible for all departmental ranks whenever weather is unseasonable during the summer uniform of the day wearing period.

Intermediate

B. Intermediate Uniform

1. Sergeant and Patrolman - blue long sleeve shirt, black tie,blouse, trousers, black shoes, eight point cap and rainwear for inclement weather.

2. Lieutenant and above - white long sleeve shirt, black tie,blouse, trousers, black shoes, eight point cap and rainwear for inclement weather.

Winter

C. Winter Uniform

1. Sergeant and Patrolman - blue long sleeve shirt, black tie, trousers, reefer or unicoat, black shoes, eight point cap and rainwear for inclement weather.

2. Lieutenant and above - white long sleeve shirt, black tie,blouse, trousers, black shoes, eight point cap, utility coat and rainwear for inclement weather.

Class ''B'' Summer

1.7 Class ''B'' Uniform - Sergeant and Patrolman.

A. Summer - light weight blue work

uniforms and equipment

pants, blue uniform short sleeve shirt, black shoes, dark blue baseball cap with Suffolk County insignia attached, (eight point cap permissible).

Intermediate

B. Intermediate - same as for summer and with a blue zippered jacket.

Winter

C. Winter - heavy weight blue work pants, blue uniform long sleeve shirt, (black tie permissible),black shoes, dark blue baseball cap with Suffolk County insignia attached, (eight point cap permissible) and blue zippered parka.

Class ''C''

1.8 Class ''C'' Uniform - green uniform work clothes rented for civilian employees; a green eight point cap is worn when required.

Recruit Uniform

1.9 Recruit Uniform - gray shirt, gray trousers and other clothing and articles of equipment as designated by the Commanding Officer, Police Academy.

Authorized Exceptions

1.10 The following are authorized exceptions to the Class A and Class B uniforms.

A. Assigned motorcycle personnel wear breeches, leather jacket and helmet in lieu of trousers, blouse and eight point cap.

B. Assigned aviation and canine personnel wear leather jacket in lieu of blouse.

C. Assigned marine personnel wear deck sneakers in lieu of black shoes when on board.

Prescribed Gloves

1.11 Members of the Force while in uniform wear plain black leather gloves except when wearing Summer

uniform or directing traffic.
A. Members of the Force when directing traffic wear white gloves.
B. Members assigned to operate motorcycles wear black leather gloves as prescribed or otherwise directed.

Uniform Sweater

1.12 The uniform blue sweater may be worn at any time providing it is worn under an outergarment such as a blouse, reefer, raincoat, jacket, parka or officer's utility coat.

Uniform Scarf

1.13 The uniform issue blue scarf may be worn during inclement weather in conjunction with the winter uniform of the day.

Title

2.0 DESIGNATED INSIGNIA

Department Insignia

2.1 Members of the Force wear the prescribed departmental insignia on the right and left sleeve of all prescribed uniforms except leather jackets, raincoats of any type, officers winter white shirts and sweaters. The top center of this insignia is worn one-half inch below the shoulder seam in line with the center of the sleeve. Other special type insignia is worn as directed.

Crossing Guards Insignia

A. Crossing Guards wear an insignia entitled "Crossing Guard" on the right and left sleeve of all uniforms directly centered below and touching the Suffolk County insignia

Rank Insignia

2.2 Members of the Force wear the prescribed insignia designating their rank.

Division Chiefs

A. Division Chiefs Three gold stars, evenly spaced, on each shoul-

er. The visor of the cap prescribed for this rank is adorned with embroidered raised gold leaf clusters.

Deputy Division Chiefs

B. Deputy Division Chiefs One gold star on each shoulder. The visor of the cap prescribed for this rank is adorned with embroidered raised gold leaf clusters.

Deputy Chief Inspector

C. Deputy Chief Inspector: Same as above.

Inspector

D. Inspector One raised gilt metal spread eagle, displayed with eagle facing outward, on each shoulder The visor of the cap prescribed for this rank is adorned with embroidered raised gold leaf clusters

Deputy Inspector

E. Deputy Inspector One raised gilt metal maple leaf with stem facing outward on each shoulder The visor of the cap prescribed for this rank is adorned with embroidered raised gold leaf clusters.

Captain

F. Captain: Two raised gilt metal bars, displayed parallel to shoulder seams, on each shoulder.

Lieutenant

G. Lieutenant: One raised gilt metal bar, displayed parallel to shoulder seams, on each shoulder.

Sergeant

H. Sergeant: One three stripe chevron displayed on each sleeve six inches below the shoulder seam, the upper point of the chevron in line with the lower point of the prescribed departmental insignia.

Braid Sleeve & Trousers

2.3 All ranks above Sergeant wear on the prescribed uniform coats a band of lustrous black mohair braid one and one quarter inches wide placed with its lower edge three and one half inches above the bottom of

the sleeve; a black mohair braid, one and one quarter inches wide covers the outside vertical seam of the prescribed uniform trousers.
A. The Sergeant rank wears a black mohair braid three-eighths of an inch wide which covers the outside vertical seam of the prescribed uniform trousers.

Gold Chin Strap

2.4 The prescribed uniform cap for the rank of Sergeant and above is furnished with a gold colored chin strap.

Service Stripe

2.5 Sergeants and Patrolmen who have served five years, wear on both sleeves of all uniform coats a service stripe which consists of a black tubular braid, three-eighths of an inch wide, placed on the front of the sleeve, adjoining and above the cuff seam. A similar stripe is added for each additional five years service and the stripes are placed one-quarter inch apart.

Collar Insignia

2.6 Sergeants and Patrolmen wear the collar insignia as issued and prescribed by the Quartermaster Section when wearing the uniform of the day.

Breast Bar Award

2.7 Members of the Force who are recipients of awards, are awarded a metal breast bar and wear same at all times while in uniform except on raincoats of any type, officers winter white shirts and sweaters. The bar is worn horizontally, one-half (½) inch above the shield and centered.

Marksman Insignia

2.8 Insignia for marksmanship is worn one-half (½) inch above shield, centered and is worn in conjunction with the departmental recognition insignia. Where more than one (1) insignia is worn, they are separated by one-quarter (¼) inch. When more than one (1) insignia is worn, the order of precedence is: Highest Department Recognition Bar (top), Marksmanship Insignia directly above shield.

American Flag Emblem

2.9 Those members wishing to display an American Flag Emblem on their uniform may do so. However to maintain uniformity, and dignity of both the uniform and the flag, the following guidelines will be adhered to:
A. The emblem must not be more than one (1) inch square.
B. It will be a bonafide replica of the American Flag with nothing superimposed upon it and of metal composition.
C. It will be worn centered over the breast shield, with the bottom thereof ½ inch above the top of the shield or ¼ inch above the top of the uppermost authorized breast bar award.

Title

3.0 PRESCRIBED EQUIPMENT

On Duty Equipment

3.1 Members of the Force on duty carry the following equipment in serviceable condition, or as otherwise directed:

Patrol Division

A. Patrol Division:
1. Fully loaded with six (6) rounds, a Smith and Wesson or Colt .38 Spe-

uniforms and equipment

cial Caliber Revolver, with a four inch barrel.
2. Twelve extra .38 Special Caliber cartridges.
3. Holster with belt.
4. Mark IV or V Chemical Mace with Holster.
5. Memorandum book (as outlined in these Rules and Procedures).
6. Ballpoint pen.
7. Billie.
8. Handcuffs and Key.
9. Traffic whistle.
10. Flashlight (during hours of darkness).
11. Nightstick (baton) as ordered.

All other Members

B. All other members of the Force, unless otherwise directed, carry as follows:
1. Fully loaded .38 Special Caliber, Smith & Wesson or Colt, revolver not less than two inch barrel with a safety bar.
2. Six extra cartridges.
3. Mark II - Chemical Mace
4. Holster, handcuffs & key.
5. Billie.
6. Ballpoint pen.
7. Memorandum book (as outlined in these Rules and Procedures).

Cartridge Specifications

3.2 .38 special cartridges carried by members of the Force when on duty means 125 grain semi-jacketed hollow point ammunition issued by this Department. This is the only ammunition to be carried. Armor piercing, wad cutters, tracers, reloads or tear gas shells are not authorized.

Special Assignments

3.3 Members of the Force on special assignment, whether in uniform or not, carry such weapons and special equipment as directed by the Commanding Officer making such assignment.

uniforms and equipment

Baton (Night - stick)

3.4 Nightsticks (batons) are carried by members of the Force when in uniform and on duty during the 4 to 12 and 12 to 8 tours, or as otherwise directed.

Off Duty Equipment

3.5 When off duty and not in uniform, members of the Force may carry, at their own option, a fully loaded firearm.

Title

4.0 QUARTERMASTER ISSUE

Quartermaster Issue Only

4.1 The prescribed uniform, shield, cap device or other prescribed insignia and articles of equipment is as issued by the Quartermaster Section.

Property Of Dept.

4.2 All clothing and articles of equipment issued by this Section is at all times the property of the Police Department and is subject to recall, inspection and disposition at any time.

Termination of Service

4.3 When a member of the Department terminates his service in any manner, his Commanding Officer is responsible for the return of all clothing and articles of equipment issued to him as listed in the prescribed manner by the Quartermaster Section.

Recall of Issue

4.4 When a member of the Department is transferred, or promoted and certain articles of clothing and equip-

ment are no longer required by that member to function in his new assignment or rank, these articles of clothing and equipment are recalled by the Quartermaster Section as listed in the prescribed manner. It is the responsibility of the member's former Commanding Officer to see that this recall of articles is effected.

Q.M. Notification

4.5 The Personnel Bureau notifies the Quartermaster Section of all personnel changes in order that all the above may be effected.

Description of Issues

4.6 Articles of clothing include, but are not limited to, all types of uniforms and wearing apparel, specialized or otherwise. Articles of equipment include, but are not limited to, shield, cap device, insignia of rank, Departmental identification card, Rules and Procedures, memorandum books and all inserts (completed during that member's service), firearms, and any or all other specialized equipment.

Equipment Lost/ Damaged

4.7 Members of the Force are to immediately report to their supervising officer the loss, damage to, or unserviceable condition of their uniforms and articles of equipment as outlined by these Rules and Procedures.

Shield - Carrying of

4.8 Members of the Force carry their shield at all times.
A. When in uniform, the shield is worn on the outermost garment over

the left breast in the place provided.
B. When not in uniform, the shield is displayed on the outermost garment when it is necessary for a member of the Force to establish his official identity.

Title

5.0 DEPARTMENT PROPERTY AND EQUIPMENT

Dept. Prop. Care of

5.1 A member of the Department is responsible for the safekeeping, good care, proper maintenance and serviceable condition of departmental property issued for or assigned to his use. He immediately reports to his Commanding Officer damage to or unserviceable condition of any departmental property issued for or assigned to his use. If such loss or damage results from carelessness or negligence, it becomes the cause for departmental charges. He does not alter police equipment by changing same, in any way, except in cases of emergency or as ordered by the Police Commissioner.

Dept. Property Littering

5.2 A member of the Department does not litter with refuse any departmental property, building, booth, vehicle, boat or aircraft.

Dept. Vehicles Operations

5.3 A member of the Department operates a departmental vehicle in a careful and prudent manner at all times even though responding to an emergency or engaged in close pursuit.

Equipment Care of

5.4 A member of the Department is responsible for the proper care and

condition of equipment contained in any department building, booth, vehicle, boat or aircraft.

Radio Removal Disabled Vehicles

5.5 Any time a police vehicle is in an accident or disabled, or is to be sent to any garage or repair shop, it is the duty of the operator of that police vehicle to remove the radio (tray), and microphone to his command office. The radio serial number and the reason for the removal of said equipment is to be reported on internal correspondence and forwarded to the Communications Bureau. In the event the police vehicle operator is unable to remove the above mentioned equipment, due to his being disabled, another officer is assigned by the Communications Bureau Duty Officer to perform this function.

Dept. Property-Possession

5.6 A member of the Department does not use or have in his possession any departmental property unless its use or possession is authorized by proper authority.

Requisition Supplies

5.7 He does not requisition supplies from the Supply and Procurement Bureau without the certified approval of his Commanding Officer on the appropriate form.

Designated Equip.only

5.8 A member of the Department carries only designated equipment when in the performance of police duty.

Dept.Prop. Inauth. Presence

5.9 A member of the Department does not permit anyone other than members of the Force or Department to enter or remain in a departmental building, booth, vehicle, boat or aircraft except on official business or as otherwise directed.

Dept.Prop. Lost/Stolen

5.10 A member of the Force whose identification card, shield, cap device or firearm is lost or stolen notifies his commanding officer immediately. He prepares a Field Report, and a Supplementary Report in quadruplicate to fully explain the circumstances which caused said loss. The Supplementary Report is submitted to his commanding officer who authorizes the transmission of a teletype message (lost or stolen property) and forwards the report verified by his signature, as follows: original to the Central Records Bureau, duplicate to his Division Commander, triplicate to the Legal and Inspection Bureau and the quadruplicate to the commanding officer of the Supply & Procurement Bureau. The Field Report is forwarded as prescribed in the forms system. The Supply & Procurement Bureau, Quartermaster or Armorer Sections are authorized to issue a replacement shield, cap device or firearm, upon the written requisition of the member's Division Commanding Officer. The Identification Section is authorized to issue a new identification card upon the written requisition of the member's

Division Commanding Officer. The Legal & Inspection Bureau causes an investigation of the incident to determine if charges are to be preferred against the member and forwards all reports to the Personnel Records Section for inclusion in the member's Force Record after a final determination.

Incapacity to Safeguard

5.11 A member of the Force who is on sick report, injured, and or is to be admitted to a hospital or other similar institution, for any reason, and who cannot, in the judgment of his commanding officer, immediate supervisor or other superior officer delegated to act in this capacity by the member's commanding officer, properly safeguard his weapons, shield, cap device, identification card and other equipment such as, but not limited to, handcuffs, billie, batons, surrenders these articles to his commanding officer, supervisor or other superior officer delegated to act in this capacity by the member's commanding officer. The officer to whom these articles are surrendered prepares a Field Report and a Supplementary Report, in triplicate to fully explain the circumstances. The Field Report is forwarded as prescribed in the forms system. The Supplementary Report is forwarded as follows: original to Central Records and duplicate to the Division Commander. All copies of this report must bear the endorsement of the member's commanding officer. Said articles are

promptly invoiced on the appropriate form, a general receipt presented to the member and said articles delivered to the Property Bureau. When the member is deemed fit for duty, the commanding officer certifies as to such fitness on the appropriate form, which authorizes the release of said surrendered articles by the Property Clerk to the member.

Authorized Shield

5.12 A member of the Force or Department neither wears, uses, displays nor has in his possession a police shield or other similar object except as authorized by the Police Commissioner.

I.D.Card

5.13 A member of the Department is to carry, at all times, the authorized Police Department, County of Suffolk, N.Y. laminated identification card. The identification card is issued to the members of the Police Department by direction of the Police Commissioner and identifies the member by name, rank or title, photograph, signature and social security number. Such identification card is not issued to any person who is not an employee of the Police Department, County of Suffolk, N.Y.

Chemical Mace

5.14 All members of the Force are issued Chemical Mace - a non lethal weapon.

Members of the Patrol Division are issued the Mark IV or V weapon (spray can size) with holster, to be carried on the gun belt.

Members of the Detective Division

uniforms and equipment

and those members performing plain-clothes duties are issued the Mark II - pocket size weapon with clip. All members of the Force are required to carry the issued Chemical Mace weapon when on duty.

The use of Chemical Mace is controlled by the same sections of the Penal Law that now control the use of our existing issued weapons and the use of physical force. Chemical Mace is not used on a subject unless the member of the Force reasonably believes that the use of Chemical Mace is necessary to effect an arrest, or for self-defense, or the defense of a third party against unlawful physical force.

When Chemical Mace is used, the member of the Force involved causes the face and eyes of the subject to be washed or flushed with cold water as soon as possible. In addition, the subject is examined by a police surgeon or other medical doctor.

When a Chemical Mace weapon is used or discharged, or is lost, for any reason and in any manner, the reporting of and recording of such action is as now required for a weapon discharged or lost by any member of the Force as outlined in these Rules and Procedures.

When a Chemical Mace weapon is exhausted or inoperative, it is turned in to the nearest precinct for a replacement.

discipline & punishment

Title — **1.0 AUTHORITY**

Civil Service Law — **1.1** Discipline and punishment determination against any member of the Department is in accordance with the provisions of the Civil Service Law of the State of New York and Section 1213 of the Suffolk County Charter.

Suffolk County Charter — **1.2** The Police Commissioner, pursuant to Section 1213 of the Suffolk County Charter, may designate a Captain or an Inspector to conduct hearings on charges against lieutenants, sergeants and patrolmen, and to report his findings and recommendations to the Police Commissioner for action thereon.

Power to Discipline — **1.3** The Police Commissioner has the power to discipline a member of the Department by:

A. Reprimand
B. Fine
C. Suspension, with or without pay, in accordance with the provisions of the civil service or other applicable law.
D. Dismissal or removal from the force, or
E. Reducing into grade below that in which he was serving, if he be above the grade of patrolman, after which his compensation is the same as that allowed to members of the grade to which he is reduced.

Title — **2.0 DISCIPLINE**

Cause for Discipline — **2.1** Members are disciplined for the following reasons only:

discipline & punishment

A. Conviction for any criminal offense.
B. Neglect of duty
C. Violation of rules
D. Neglect or disobedience of orders
E. Incapacity
F. Absence without leave
G. Conduct injurious to the public peace or welfare
H. Immoral conduct
I. Conduct unbecoming an officer, or
J. Any other breach of discipline such as conduct to the prejudice of good order and efficiency.

+ Suspension from Duty

2.2 Members of the Department may be suspended from duty whenever, in the opinion of the Police Commissioner, such action is necessary. Such suspension is in accordance with the Civil Service Law, Suffolk County Charter, or other applicable law.

Daily Reporting

A. Unless otherwise directed by the Police Commissioner, a member of the Department under suspension reports daily, in person, to his Commanding Officer at the office of his command, or by permission of the Police Commissioner to the commanding officer of his residence precinct, at the office of that command. If above the rank of Lieutenant, he reports daily, in person, to the Division Commander.

Surrender of Equip.

B. Upon suspension, a member of the Department promptly surrenders all departmental property, also his service revolver and any and all other revolvers and pistols possessed by him; such property is invoiced to the Property Bureau, and returned to the member when relieved from suspension.

discipline & punishment

Uniform Prohibited

C. During the period of suspension, a member of the Force does not wear his uniform, nor any distinguishable part thereof, nor carry any police equipment.

+ Cause for Dismissal

2.3 A member of the Department found guilty of violating a Rule or Procedure of the Department, or of the provisions of any order or orders, or of cowardice, or of intoxication while on duty or while in uniform, or of conduct unbecoming an officer, or of making a false official communication, record or statement, or a member of the Department convicted in a Court having criminal jurisdiction, may be dismissed from the Department, or suffer such other punishment as the Police Commissioner may direct, pursuant to the Civil Service Law, Suffolk County Charter or other aplicable law.

Misc. Infractions

2.4 Disorder or neglect to the prejudice of good order, efficiency or discipline, though not specifically mentioned in these Rules and Procedures is taken cognizance of by the Department, and members found guilty thereof are punished at the discretion of the Police Commissioner.

discipline & punishment

Title — **3.0 CHARGES & SPECIFICATIONS**

Violation Reporting Procedure

3.1 A report of any violation of these Rules and Procedures is submitted by any member of this Department on internal correspondence. It is prepared in quadruplicate and must be legibly written or handprinted or typewritten. The report must state the violator's name in full, rank, shield number (when applicable), command, date time and full details concerning the violation, be signed by the member reporting and forwarded through channels to the office of the Police Commissioner without any delay.

Upon receiving same, the Police Commissioner will review the report and then make his determination as to any further action, either the submitted report will be returned with an attached certified determination as follows:

Original - For insertion inviolator's force record.
1st copy - Forwarded to violator.
2nd copy - Forwarded to member reporting.
3rd copy - Forwarded to violator's commanding officer.

or

The submitted report will be forwarded to the Legal & Inspection Bureau for investigation.

Board of Chiefs

3.2 An investigation of the report by the Legal & Inspection Bureau is forwarded to a Board composed of the Chief of Operations, Chief of Personnel, Chief of Detectives and Chief of District. The Board may recommend

discipline & punishment

that charges and specifications be preferred.

Written Charges

3.3 Charges in writing are preferred against a member of the Department alleged to be guilty of infractions of these Rules and Procedures, or of Departmental Orders and instructions. The accused is offered an opportunity to be represented by an attorney.

Rights of Accused

3.4 Each member of the Department to be heard on charges is served with a copy of the charges and specifications at least eight (8) days before arraignment, exclusive of Sundays and legal holidays. Notice for members to appear as complainants or witnesses are sent by the police teletype system. The accused member may, upon his arraignment, request from the Police Commissioner or the officer conducting the hearing the attendance of witness in his behalf. The accused is given the opportunity to plead to all or any part of charges prior to hearing date.

Serving Procedure

3.5 Service is made upon accused as follows: Personal delivery of charges and specifications, or if personal delivery cannot be made, then by leaving a copy of the charges at his place of residence with some person of age and discretion, and by notifying such person orally of the nature of the papers, or if personal delivery cannot be made, and the residence cannot be located, then by posting a copy of the charg-

es conspicuously in the office of the Command to which the accused is attached, at least eight (8) days before time of arraignment, exclusive of Sundays and legal holidays.

Acknowledge Receipt

3.6 Members of the Department served with charges promptly acknowledge such service by signing same. The member serving the charges witnesses such signature on all copies, certifying same with his signature, rank, shield number, command, date, time and location of service.

Arraignment

3.7 Attendance of complainant and witnesses is not necessary at the arraignment.

Hearing

3.8 A hearing is conducted without unnecessary technicality, without unnecessary or unreasonable delay, and without offensive speech or action on the part of anyone. The Police Commissioner or the officer conducting the hearing may exclude forthwith, without prejudice to the accused, from further attendance at the hearing, a person who offends against any of these requirements.

Arraignment Procedure

3.9 Departmental Procedure at arraignment:
The accused is arraigned as follows:
''Rank Surname, have you been served with a copy of these charges?
''Do you waive the reading of the charges at this time?
''Before I ask you how you plead, I wish to inform you of your right to

be represented by counsel, to request the attendance of witnesses in your behalf, to move for a dismissal of the charges upon pertinent grounds, or to move for an adjournment.
''You are further advised that upon your plea of guilty, or after being found guilty of any violation of the Rules and Procedures of the Police Department, County of Suffolk, New York, under Section 1213 of the Suffolk County Charter, and Article 5, Section 75 of the Civil Service Law, the Police Commissioner has the power to discipline a member of the Department by:
''Reprimand;
''Fine:
''Suspension with or without pay, in accordance with the provisions of the Civil Service or other applicable law;
''Dismissal or removal from the Force or Department; or
''Reducing into any grade below that in which he was serving, if he be above the grade of patrolman, after which his compensation is the same as that allowed to members of the grade to which he is reduced.
''Now, how do you plead to specification number one (etc.)''

Hearing Procedure

3.10 Department Procedure at Hearing.
The accused is called.
The accused pleads ''guilty''or''not guilty'' to each specification. The witnesses for the Department are introduced in the order directed by

the Hearing Commissioner. Before testifying, the witnesses are sworn by the Hearing Commissioner. The Department conducts the direct examination; at the conclusion of the direct examination, the witness is at the disposal of the accused or the accused's counsel for cross-examination; the witness is subject to re-direct examination, followed by re-cross by the accused or the accused's counsel. After the witnesses for the Department have testified, that fact is communicated to the accused, and he then is permitted to proceed with his defense.

Each witness for the accused is sworn and his identity established. The accused or the accused's counsel conducts the direct examination; at the conclusion of the direct examination, the witness is at the disposal of the Department or the Department's counsel for cross-examination; the witness is subject to re-direct examination, followed by re-cross by the Department or the Department's counsel.

At the conclusion of the testimony offered by the witnesses for the accused, witnesses may be called by the Department in rebuttal. They are subject to cross-examination. The accused then has an opportunity to introduce such other testimony as is competent and material, that he may desire. The accused is given an opportunity to testify under oath in his own behalf, and be subject to cross-examination by the Department.

The accused or his counsel and the Department are given a brief opportunity to sum up, or make pertinent motions.

The Hearing Commissioner, at his discretion, may exclude from the hearing room, every person except the accused, his counsel, the prosecutor and counsel, the County Attorney, Court Clerk and Stenographer.

Petition to Review

3.11 A petition to review a determination by the Police Commissioner to fine, suspend, dismiss or otherwise discipline a member of the Police Department is not granted after the expiration of thirty (30) days from the service of a notice of such determination upon the member of the Department so fined, suspended, dismissed or otherwise disciplined.

Title

4.0 GRIEVANCE PROCEDURE

Preamble

4.1 In order to establish a more harmonious and cooperative relationship between the County and the members of the Police Department, and to avoid and resolve disputes involving alleged violations of the terms of this Agreement, it is the purpose of this provision of this Agreement, to provide for the settlement of differences through an orderly grievance procedure. All the provisions of this Section of this Agreement shall be liberally construed for the accomplishment of this purpose.

Basic Standards & Principles

4.2 A. Every member of the Police Department shall have the right to join or to continue as a member of any employee association or labor organization; provided, however, that no employee shall organize or help to organize or become a member of any society or group of persons which teaches or advocates that the government of the United States or of any state or of any political subdivision thereof shall be overthrown by force or violence, or by any unlawful means.

B. Every member of the Police Department shall have the right to present his grievance in accordance with the procedures prescribed hereunder, with or without a representative of his own choosing, free from interference, coercion, restraint, discrimination or reprisal. There shall be no discrimination against any member of the Police Department because such member has formed, joined, or chosen to be represented by any employee organization for the purposes of this provision. The Association shall have the right to initiate a grievance of a member of the Police Department. Furthermore, the Association shall have the right to initiate group grievances, namely grievances which affect officers in more than one Command. Such group grievances shall be initiated at the second level (Commissioner).

C. It is a fundamental responsibility of supervisors at all levels to consider and commensurate with authority delegated by the head of the department or agency, to take appropriate action promptly and fairly upon the grievances of their subordinates. To this end appropriate authority shall be delegated to supervisors by heads of departments and agencies.

D. The Commanding Officer of each Command shall be responsible for carrying out the provisions of this procedure and the regulations prescribed hereunder and maintaining the standards herein prescribed in his Command.

E. The Commanding Officers of each Command or their designated representatives shall hold conferences at appropriate times with members of the Police Department on problems relating to conditions of employment and the continued improvement of the public service. Proposed new rules or modifications of existing rules governing working conditions should, wherever practicable, be announced in advance and discussed in conference with employee representatives before they are established. Employees are encouraged to contribute their experiences and their ideas to the solution of problems in the public service and to acquire a feeling of identification with the objectives of their department or Command.

Consideration of Grievances

4.3 Members of the Police Department, supervisors and appointing authorities are expected to exhaust every administrative device to settle amicably all differences of opinion. In the interest of uniform

procedure and to expedite handling, members of the Police Department are expected normally to present their problem or grievance through regular supervisory channels in the following order:

First Level

A. The Precinct Commander or Bureau Commander.

The Employee shall first request an interview with his Precinct or Bureau Commander. The Precinct or Bureau Commander shall, within the first three (3) business days the grievant is on duty after such request, discuss the grievance with the Employee concerned during the Employee's tour of duty. In matters for which the immediate Supervising Officer is responsible, such as work assignments or work quotas, the Precinct or Bureau Commander shall make a determination in writing within three (3) business days after such discussion. In matters beyond the authority of the Precinct or Bureau Commander, the Commander shall advise the Employee in writing within three (3) business days after such discussion to submit his grievance in writing so that it may be taken up at the second level with the Police Commissioner. One Association delegate or trustee in each command or precinct shall be permitted to devote a reasonable period of time during the tour, or the next succeeding tour, in which a grievance arises to handle or process such grievance. The handling or processing of a grievance shall include conferring with supervision.

Second Level

B. Police Commissioner

If a grievance is not satisfactorily settled at the first level, the Employee may, within ten (10) business days, request a review by the Police Commissioner. In such case, the specific nature of the grievance and the facts relating thereto shall be reduced to writing jointly or separately by the Employee and his superior. If a hearing is requested, the Police Commissioner shall conduct a hearing within five (5) business days after receipt of such request. If the Employee still be aggrieved or if a group grievance which is initiated at the second level remains unsatisfied, the grievant or the Association may refer the grievance to the third level.

Third Level

C. Director of Labor Relations.

If the grievance is not satisfactorily settled by the Police Commissioner, the Employee may appeal in writing to the Director of Labor Relations of the County of Suffolk within ten (10) business days of the receipt of the decision of the Police Commissioner. He shall review the entire record made to date and render his decision, with a copy to the Employee, within five (5) business days of receipt of such appeal. If the Employee still be aggrieved, or if it be a group grievance, and remains unsatisfied, the grievant or the Association may request in writing to the Suffolk County Public Employment Relations Board, that arbitration be had to consider the matter. Effective January 1, 1973,

at the option of either party, the American Arbitration Association shall be substituted as the arbitrating body for the Suffolk County Public Employment Relations Board.

Fourth Level

D. Arbitration.

Arbitration shall be invoked by the Association by requesting with notice to the other party, the Suffolk County Public Employment Relations Board, to appoint an arbitrator. The Board shall submit a panel of five arbitrators to both parties, who shall indicate their preferences among such panel, so that the appointment of the arbitrator shall be based upon such preferences. In the event that the parties cannot agree on a mutual choice from the panel of five arbitrators, an arbitrator shall be appointed by the Suffolk County Public Employment Board. In addition to the arbitrator appointed by the Suffolk County Public Employment Relations Board, each party shall have the right to appoint a non-voting member of the arbitrating board. In the event either party exercises his option in 1973, to have the American Arbitration Association conduct arbitrations, such arbitrations shall be conducted in accordance with the rules of that Association, provided, however, that each party retains the right to appoint a non-voting arbitrator to the arbitration board.

Time of Hearings

4.4 All discussions and hearings between an Employee, the supervisors, the Commissioner, the Director of Labor Relations and the Arbitration

Board shall, so far as practicable, be conducted within the Employee's working hours. An Employee and his representative shall be allowed such time off from their regular duties as may be necessary and reasonable for hearings and discussions.

Representation

4.5 An Employee shall be entitled to a representative of his own choosing in the presentation and processing of a grievance in all stages, but only the Association shall have the right to invoke and utilize the arbitration procedure provided in this Agreement.

Application

4.6 A. The provisions of this procedure shall apply to all members of the Police Department of Suffolk County.

B. The provisions of this procedure shall be applicable in any department or agency to conditions which are in whole or in part subject to the control of the head of such department or agency, and which involve alleged safety or health hazards, unsatisfactory physical facilities, surroundings, materials or equipment unfair or discriminatory supervisory and disciplinary practice, unjust treatment by fellow workers, unreasonable assignment of working hours or personal time allowances, unfair or unreasonable work quotas, alleged violations of the provisions of this Agreement, and all other grievances relating to conditions of

discipline & punishment

employment; provided, however, that this procedure shall not apply to matters which are reviewable under legal or administrative procedures established by law.

C. Such items as dismissals, demotions, suspensions, reduction in pay, position classifications, salary allocations, Civil Service examinations and other matters which are specifically covered in other procedures or laws are not subject to review as grievances under this procedure.

courtesies & recognitions

Title — **1.0 RESPECT ACCORDED TO RANK**

Saluting Procedure — 1.1 Members of the Force tender and return the personal salute prescribed by the United States Infantry Drill regulations. The salute is tendered by the subordinates within six (6) paces, and smartly and promptly acknowledged by the superior. Superior Officers include the rank of Sergeant and above. Members in civilian clothes are not required to salute. Uniformed members when in a building are required to salute only superiors assigned to desk duty. Members of the Department other than the Police Commissioner and Deputy Police Commissioners are not tendered the salute unless such member is in full uniform. Members of the Force lining parades or at fires, or on occasions when a large number of policemen are assembled for a specific purpose, do not salute superiors, unless they address, or are addressed by such superiors.

Respect to Superior — 1.2 Unless such action interferes with the performance of some particular police duty, a member of the Force in uniform, before addressing a superior officer, or when addressed by him, stands at attention, and tenders the hand salute.

Entering Superior's Office — 1.3 Upon entering the office of the Police Commissioner, or a member of the Force above the rank of Lieutenant, a subordinate removes his hat and stands at attention.

Superior Entering Room

1.4 When the Police Commissioner, or an officer above the rank of Captain, enters the room in which there are subordinate members of the Force, they assume and maintain the position of attention until the superior leaves the room, or until otherwise ordered.

Title

2.0 RESPECT FOR NATIONAL COLORS

Flag Procedures

2.1 Members of the Force, carrying the National Colors, do not dip it to any person, or upon any occasion.

Held Aloft

A. The flag is never held flat or horizontal, but always held aloft and free. Base of the staff rests against the body and slopes at an angle of about thirty degrees from the body. No part of the flag itself is carried against the staff except when lowering the staff through a doorway.

Held at Side

B. The Flag may also be carried at the side of the body. When this is done, the staff is held vertically in the right hand, gripped between thumb and forefinger. The back of the hand is to the right, and the arm is extended downward. The staff rests against the outer side of the shoulder, with the base of the staff about midway between the hip and knee.

Entering a Room

C. When the flag is carried into a meeting room, everyone in the hall stands facing the platform. The color bearer, followed by the escort, marches to the front and faces the audience. The escort takes a position on either side of the flag

bearer as he places the flag in its stand.

With other Flags

D. When the flag is carried with another flag or flags, it is on the marching right, that is the flag's own right, or, if there is a line of other flags, it is placed in front of the center of that line.

On Platform

E. When the flag of the United States is used on the speaker's platform and displayed flat, it hangs above and behind the speaker, with the union on his right.

From Staff

F. When the flag is displayed from a staff in a precinct station house at the precinct main desk or in an auditorium on the platform it occupies the position of honor and is placed to the right of the person speaking to any audience.

Saluting National Colors

2.2 Members of the Force salute the National Colors as it passes or is presented on all public occasions, ceremonies or parades, unless performing police duty requiring immediate attention:

In Uniform

A. In uniform, covered or uncovered - with the hand salute.

With Nightstick

B. In uniform, with nightstick - with nightstick salute.

Civ. Clothes-Uncovered

C. In civilian clothes, uncovered - stand at attention.

Civ. Clothes-Covered

D. In civilian clothes, covered - uncover with right hand, and hold the headdress opposite left shoulder.

In Halt Formation

E. In formation at a halt - the command is brought to attention and the right hand salute is tendered, or with the nightstick salute if car-

ried when the National Colors has arrived within a distance of six (6) paces and continued until it has passed six (6) paces beyond.

In Motion Formation

F. In formation in motion - the command executes ''EYES RIGHT (OR LEFT)'' upon command, and the Commanding Officer and other officer and Police Officer, not in ranks, salute with the hand salute.

Saluting National Anthem

2.3 Salutes to National Anthem are tendered by members of the Force the same way as to the National Colors, except that if no National Colors are displayed, the members face the music.

Half Mast Procedures

2.4 The National Colors are placed at half-mast at Police Headquarters or a precinct station house to which a member of the Force was assigned at the time of his death, from sunrise to sunset, as follows:

Officer to Lt.

A. For a Police Officer, Sergeant or Lieutenant - on the day of his funeral.

Captain

B. For a Captain - from the time of his death to sunset on the day of his funeral.

Inspector

C. For an Inspector - on all buildings and facilities of his command, from the time of his death to sunset on the day of his funeral.

Line of Duty Death

D. On the death of a member of the Force killed in the performance of duty - on all Departmental facilities for a period of (30) thirty days commencing from the time of his death.

Title

3.0 FUNERAL PROCEDURE

Member of Department

3.1 In the case of the death of a member of the Department within the County of Suffolk, it is the duty of his commanding officer to notify the Chief of District as to whether or not an escort for the funeral is desired by the family of the deceased. If so requested, the Chief of District directs the Commanding Officer, Police Academy, who is in charge of the escort, to provide color guard, honor guard and pallbearers.

Honor Guard Posted

A. At the place where the deceased is reposing, an Honor Guard to post the casket during visitation periods is assigned and in such number as to properly maintain the post at the discretion of the Police Commissioner.

Escort & Honors Unit

3.2 A Police Escort and Honors Unit file is maintained by the Commanding Officer, Police Academy. This unit consists of a color guard and bearers, pallbearers, and a number of officers designated as honor guard, the number to be consistent with the needs of the department, or as otherwise directed by the Police Commissioner. Members are assigned to this unit on a collateral duty basis.

Collateral Duty

3.3 Assignment to collateral duty in the Escort and Honors Unit is equally divided among the precincts and commands.

courtesies & recognitions

Notification Necessary

3.4 In the case of death of a member of the Force it is the duty of his commanding officer to obtain the following information and transmit same to the Duty Officer, Communications Bureau, who notifies the Commanding Officer, Police Academy. In the case of death of a retired member of the Department, this duty is carried out by the Commanding Officer of the precinct in which the deceased resided.

Information Required

A. Rank, Full Name, Shield Number and Command.
Date and Time of Death
Place of death
Residence address
Funeral details, time, place location, residence, funeral parlor, etc.
Time, date, location of services
Cemetery - Name and location
Information concerning deceased's association with the police line and fraternal organizations and family's desires whether or not such organizations be notified.
Requests:
Escort
Pallbearers
Chaplain - denomination requested.
Next of Kin - Full name, address, relationship, telephone number.
Funeral Director - Name, address, phone number.
Cause of death (Natural, line of police duty, etc.)
Medals and commendations which were awarded to deceased.
Date of retirement, if applicable.

courtesies & recognitions

Teletype Authorization

3.5 The Commanding Officer, Police Academy is the only officer authorized to send teletypes and notifications regarding the death of a member or former member of the Department.

Funeral Personnel Required

3.6 Six (6) honorary pallbearers, conforming to the rank of the deceased, are provided, in addition to the following:

Police Officer

A. For a Police Officer - One (1) Sergeant and Twelve (12) Police Officers.

Sergeant

B. For a Sergeant - Three (3) Sergeants and Twenty-four (24) Police Officers.

Lieutenant

C. For a Lieutenant - One (1) Lieutenant, Four (4) Sergeants and Thirty-six (36) Police Officers.

Captain

D. For a Captain - One (1) Captain, Two (2) Lieutenants, Four (4) Sergeants and Forty-eight (48) Police Officers.

Inspector

E. For an Inspector - One (1) Inspectors, Two (2) Captains, Four (4) Lieutenants, Eight (8) Sergeants, Seventy-two (72) Police Officers.

Line of Duty

F. For a member of the Department killed in the performance of duty - One (1) Inspector, Two (2) Captains, Four (4) Lieutenants, Eight (8) Sergeants, Seventy-two (72) Police Officers or as otherwise directed by the Police Commissioner

Funeral Procession

3.7 The procession is formed in the following order:
Adjutant
Music, if provided
Order of Colors

Escort
Chaplains and other member of clergy
Hearse, Pallbearers, and honorary pallbearers
Officers above the rank of Captain
Mourners

Title **4.0 AWARDS & RECOGNITIONS**

Awards Procedure 4.1 The Police Commissioner designates the number and degree of awards and a Committee of Awards, composed of eleven (11) members of the Force selected from the ranks A senior officer is designated as Chairman by the Police Commissioner The Committee of Awards reviews recommendations for awards and advises the Police Commissioner of their findings To transact official business, the Committee of Awards must have a quorum of seven (7) members and a majority must concur to recommend an award

Recommendations A Recommendations are submitted as soon as practical after occurrence of the incident Such recommendation may originate at any supervisory level or from any member of the Force and is processed through succeeding channels, with endorsement to the respective Division Chief who, after review, forwards same to the Chairman of the Committee of Awards

Appeal Procedure B Any member of the Force, believing himself entitled to departmental recognition by reason of an act done in the performance of duty, for which no recognition has been approved, may appeal in writing to the Police Commissioner within

seventy-two (72) hours after the departmental order of awards becomes effective. Notwithstanding the above, the Police Commissioner has the power to make such awards as he deems to be merited by an outstanding act on the part of a member of the Force.

Presentations C. Awards are presented at a time and place as designated by the Police Commissioner.

Type of Awards 4.2 Number and type of awards.

Medal of Honor A. Medal of Honor - Gold medal with blue and gold bar, (inscription "HONOR"). The Department Medal of Honor may be awarded to the member of the Force who intelligently and in the line of police duty outstandingly distinguishes himself by the performance of an act of gallantry and intrepidity at imminent personal hazard of life, with knowledge of the risk above and beyond the call of duty.

Combat Medal B. Combat Medal - Silver medal with blue and white silver bar, (inscription "COMBAT"). A Police Combat Medal may be awarded for the successful performance of an act of extraordinary heroism while engaged in personal combat with an armed adversary, at imminent personal hazard of life, in the intelligent performance of duty.

Medal for Bravery C. Medal for Bravery - Silver medal with white and blue silver bar, (inscription "BRAVERY"). A Medal for Bravery may be awarded for an act of personal bravery intelligently performed, involving personal risk of life, or involving grave personal danger.

courtesies & recognitions

Meritorious Police Service

D. Meritorious Police Service - Bronze plaque with blue-white-blue bar, (no inscription). May be awarded for an act of intelligent and valuable police service or accomplishment demonstrating special faithfulness or perseverance.

Purple Heart Medal

E. Purple Heart Medal - Gold medal with purple heart, purple bar, (no inscription). May be awarded to a member of the Force who is wounded (seriously) under honorable conditions, as a result of hostile behavior by another, or posthumously to a member of the Force who is killed in the performance of duty under honorable conditions.

Department Recognition Bar

F. Department Recognition Bar - White-blue-white bar, (no inscription). In addition to the exceptional awards outlined above, recognition is made of acts of efficient police activity when warranted; and, a monthly recognition list for efficient police service is published. Division Chiefs forward to the Police Commissioner, on a monthly basis, recommendations for recognition of efficient police service. Such list is forwarded by teletype to all Precincts and Commands each month. Individual recognitions are filed in the Officer's personnel jacket and a copy forwarded to him. Action by the Committee of Awards in these instances is not required. Five (5) such recognitions constitute a Departmental Recognition and the member is awarded the Department Recognition Bar.

courtesies & recognitions

The arabic numeral (2) is added to the breast bar for five (5) additional Departmental Recognitions. This numeral is increased by one (3,4,5, etc.) for each five (5) additional Departmental Recognitions. In the event a member is considered for a monthly recognition but instead is awarded a Command Level Recognition, these recognitions are filed in the Officer's personnel jacket and a copy forwarded to him. Five (5) Command level recognitions shall be the equivalent of one (1) Departmental Recognition.

Professionalization Award

G. Professionalization Award - Laminated plaque and metal breast bar, horizontal blue top and white bottom stripe, (no inscription). May be awarded to a member of the Force who has been awarded a Baccaleaurate Degree from a University or College, or a member of the Force who has furthered Police Professionalization by receiving an Associate Degree, or a member of the Force who has attended and completed the F.B.I. National Academy Course.

Special Service Award

H. Special Service Award - Laminated plaque and white-blue-white-blue-white bar, (no inscription). May be awarded to a member of the Force who submits a device or method, adopted by the Department, to increase efficiency in administrative or tactical procedures.

Civilian Commendation

I. Civilian Commendation - Laminated letter plaque, (no inscription). May be awarded to a civilian who has rendered assistance to a police officer in an emergency or who has rendered outstanding assistance to the Police Department.

courtesies & recognitions

Civilian Award

J. Civilian Award - Certificate of appreciation. May be awarded to any individual or organization who, by act or deed, has contributed to a better Police, Community relationship.

Personal Interview

4.3 The Committee of Awards may request a personal interview with the proposed recipient of an award or with any witness to the act performed by the proposed recipient.

Posthumous Award

4.4 In the event the recipient of a Department Award dies before presentation, or as a result of the act for which it was recommended, the award is made posthumously to the appropriate kin.

Duplicate Awards

4.5 Duplication - In the event of subsequent awards for the same or other categories, involving breast bars, the member wears the breast bar designating the highest award. Subsequent awards are noted thereon by oak leaf clusters, as follows:

Medal of Honor	- Gold
Combat Medal	- Silver
Medal for Bravery	- Silver
Meritorious Police Service	- Bronze

Outside Agency Awards

4.6 A member of the Force who receives, or has previously received, an award from another law enforcement agency or recognized organization, applies for permission to wear an accompanying bar. Such request is in writing and made through channels. The request is reviewed by the Committee of Awards to establish

courtesies & recognitions

authenticity and compliance with departmental policy for recommendation to the Police Commissioner for approval. Should approval be granted for the above by the Police Commissioner, the accompanying bar is worn below any Departmental bar or other insignia.

Title

1.0 DUTIES AND RESPONSIBILITIES

Duty Guide Line

1.1 The duties of the Patrolman are defined by Legislative Statutes, Judicial Interpretations, the Rules and Procedures and the orders of the Police Commissioner. The police officer while in the performance of his duties, however, must bridge the gap between the theoretical and the practical. The accomplishment of his purpose is of paramount consideration and only to this end would he go beyond the limitations of the Rules and Procedures in his determination of what action to take. This applies to ALL members of the Force.

Police Mission

1.2 A patrolman is responsible for the accomplishment of the police mission on his post and he constantly directs his best efforts toward the intelligent and efficient accomplishment of that end.

Authority for Mission

1.3 His duties encompass, but are not necessarily confined to, those as enumerated in the Suffolk County Charter, Article XII:Section 1208-C. He is held accountable for crimes, disorders and other incidents on his post.

General Duties

1.4 Patrolmen have the general duties and responsibilities prescribed for all members of the Police Department and such specific duties as are herein prescribed.

Prevention of Crime

1.5 It is the responsibility of all members to take every lawful means to prevent the commission of crime and suppress all forms of commercialized vice and gambling and the illegal use and distribution of drugs on his post. Summary arrests are made whenever practical.

Title

2.0 SPECIFIC DUTIES

Familiar with Precinct

2.1 Patrolmen thoroughly familiarize themselves with their Precinct, including railroad and bus routes and depots; highways and streets; hospitals, public utilities;Fire Departments, important industrial plants and factories; Federal, State and municipal buildings and properties; parks and picnic areas; and acquire the necessary knowledge thereof to enable them to render intelligent and pertinent assistance when requested. They are to, while on duty, carry a pocket guide or map of the Precinct. When they are unable to answer a question they obtain the desired information or direct the inquirer to a reliable source of information.

Familiarization with Post

2.2 On their assigned posts they become familiar with the location of all public, business, office and theater buildings and their exits, skylights,fire escapes and other means of escape, such as over adjacent buildings or through basements. They also familiarize themselves with those places protected by alarm systems, their type and location.

Familiarization with Persons

2.3 Patrolmen familiarize themselves with persons living or doing business on their posts and their normal habits and regular hoursof business activity. Deviations from the normal are investigated immediately.

Obtaining Information

2.4 The patrolman constantly endeavors to build up sources of confidential information by the cultivation of persons on his post and/or associates, who are deemed likely to possess information of value to the Police Department and transmits such information as prescribed by R&P 2 1.19 and 2 12.1.

Cooperation with Merchants

2 5 A patrolman advises merchants regarding suitable crime prevention measures such as placing safes so as to be visible from the street, leaving night lights burning over or near safes, barring rear doors, installing alley lights where desirable, banking often so as not to accumulate large sums of money, taking proper precautions when money is transferred, removal of valuable merchandise from display windows at night, and other security measures. He warns them when fraudulent check-passers, short-change operators, confidence men, counterfeiters, and shoplifters are operating, and explains their methods of operation. He urges merchants to cooperate with the police in reporting all suspicious persons and situations.

Emergency Business Listing

2.6 The patrolman furnishes his Commanding Officer, when required, a list of the warehouses, industries and other places of business on his post, and the names of the owners, managers and other persons designated by the owner who are to be called in the event of an emergency connected with the business or the building which it occupies.

Court Appearance

2.7 When patrolmen are scheduled to appear in Court, they notify their Commanding Officer prior to such scheduled time, so that arrangements can be made for their relief during this period.

Night Patrol

2.8 The patrolman, at night and during the time business places are closed, exercises the greatest vigilance. He examines and tries all accessible doors, windows and other openings as frequently as possible and investigates all suspicious or unusual circumstances, such as open doors, abnormal lighting, etc.

Checking Open Building

2.9 When a door or window is found open under suspicious circumstances the patrolman, if possible, summons assistance to conduct a thorough check of the premises and apprehends the intruder if he be present. He stands guard to prevent his escape pending the arrival of assistance. If circumstances prevent, or make impractical, the summoning of assistance, the officer enters the building to conduct the investigation himself if deemed such entry may b-

made without undue personal risk and consistent with the premise that although the arrest of the criminal is highly desirable, the life and safety of the officer is to be at all times considered as of paramount consideration.

Notification of Owner

2.10 After checking any building found open the officer notifies the Precinct Desk Officer, of his findings. The owner will be notified, if possible, by the Desk Officer and requested to secure the buildings. If the owner cannot be contacted, or fails to respond, the officer secures the premises and leaves a note in a conspicuous place describing the official action taken.

Open Buildings

2.11 The patrolman is held accountable for failure to discover and/or report any doors or windows of business buildings which have been broken open or have remained unsecured on his post during his tour of duty.

Suspicious Persons

2.12 The patrolman observes all persons whom he encounters on his post and investigates any such persons, who by their presence, actions or appearance, arouse his suspicions. These will include, but not necessarily be confined to, persons who loiter about banks, stores, warehouses, service stations, hotels, theaters, railroad and bus stations, and schools; persons who are carrying bags or luggage under suspicious circumstances; persons following women or prowling about on dark

streets or alleys; persons prowling around dwellings at night.

Known Criminals

2.13 He does not hesitate to investigate known criminals seen on his post.

Peddlers & Solicitors

2.14 He gives particular attention to peddlers and solicitors to determine that they are properly licensed and are not using that occupation as a cloak for some illegal purpose.

Wanted Persons

2.15 He is on the alert for persons who answer the descriptions of missing persons and wanted criminals.

Diverted Attention

2.16 He is cautious about allowing strangers to divert his attention by engaging him in prolonged and unnecessary conversations; a confederate may commit a crime while his attention is thus diverted.

Attention to Vehicles

2.17 He directs particular attention to motor vehicles, being constantly on the alert for vehicles that have been stolen or used in the commission of a crime, or that are improperly operated or illegally parked. He investigates any vehicle, the driver, occupants or cargo of which arouses his suspicions in any manner and any vehicles parked with the motor running at a location or in a manner to arouse his suspicions.

Reports Dangerous Conditions

2.18 A patrolman notes and reports all traffic control devices which are damaged, missing or obscured by undergrowth or other material, all

nuisances, impediments, obstructions, defects, in or adjacent to the streets, alleys and public places which tend to endanger the health, safety or convenience of the general public immediately to the Precinct Desk Officer by phone or via Communications Bureau.

Correcting Dangerous Conditions

2.19 When an undesirable condition exists as a result of a violation of a statute or ordinance which the Police Department is required to enforce he directs the person responsible to remedy it. In those instances, in which the removal of the undesirable condition is the responsibility of another municipal agency, or another agency is required to enforce the ordinances pertaining thereto, the officer causes immediate notice be given through his Commanding Officer to the agency whose responsibility it may be.

Reporting Dead Animals

2.20 All dead animals found on his post are promptly reported to the Desk Officer.

Abandoned Refrigerators

2.21 Members of the Force observing an abandoned icebox, refrigerator or other article as enumerated in the Penal Law removes the latches, hinges or doors immediately and notifies owner thereof, if such owner can be ascertained, of his legal obligation to render such article harmless to children by the removal of the latches, hinges, or doors before discarding same.

Protection of Children

2.22 A police officer is friendly toward all children and ever watchful of their physical and moral welfare. He, insofar as possible, patrols in the vicinity of schools, playgrounds, recreation areas, beaches and other places where children congregate to observe persons loitering in those areas and investigates those who, by their presence, appearance,or conduct arouse his suspicions.

Juvenile Gangs

2.23 He uses all legal means to break up gangs existing on his post and to prevent the formation of others.

Abandoned Children

2.24 He delivers abandoned children to the Precinct where they are placed in the care of a matron and the Juvenile Aid Section is notified. Runaway or lost children are returned to their parents, if known, and such transportation approved by the Precinct Commanding Officer, otherwise they are delivered to the Precinct and processed as abandoned children.

Title

3.0 PATROL ASSIGNMENTS

Sector Car Duties

3.1 Patrolmen assigned to patrol cars are known as sector patrolmen and have the duties and responsibilities prescribed for patrolmen and such additional duties as are herein prescribed. They maintain a constant and vigilant motor patrol, except when otherwise directed, are on the alert for violations of the Vehicle and Traffic Law and other laws

and ordinances. Radio calls are promptly acknowledged and the details assigned carried out without delay.

Footmen in Vehicle

3.2 Patrolmen assigned to foot patrol posts do not enter vehicles of any type except when authorized, nor does a sector car patrolman permit a foot patrolman to enter his vehicle without authorization.

Vehicle- Unauthorized Persons

3.3 Operators of Department owned vehicles do not, unless permission to do so has been expressly granted, permit the entrance of any unauthorized person into said vehicles.

Sector Car Operation

3.4 Radios are turned on at all times while the patrol car is in service. If, while checking a building or otherwise out of the car, the officer is in such a location as to prevent his hearing a call, he calls out of service and back in service when the detail is completed. Motors of parked police vehicles are turned off and the ignition keys removed unless the operation of the generator is required to operate the flashing red light or maintain the battery charge.

Leaving Sector

3.5 Operators of sector cars remain within the boundaries of their respective sectors unless in close pursuit, or upon authorization by the Communications Bureau or their supervising officer. The Communications Bureau is informed when a sector car leaves it's assigned area for any reason whatsoever and as

soon as possible and immediately upon its return to service in its proper sector.

Securing Vehicle

3.6 Sector car patrolmen summon aid when there is need to transport a prisoner or a person deemed likely to cause injury to the police vehicle, such as fighting drunks, mentally deranged persons, etc. The officer assigned to assist notifies the Communications Bureau when he has arrived at the scene and secures his vehicle by locking all doors and ignition and removal of the keys before accompanying the arresting officer to his destination. Upon completion of the detail, the assisting officer is transported back to his vehicle and notifies the Communications Bureau that his unit is back in service.

Recording Alarms

3.7 Sector car operators note and make memorandum on prescribed forms of all descriptions of wanted and missing persons, stolen vehicles, etc., received via radio broadcast daily bulletin, or other means.

Emergency Light & Siren

3.8 The operator of a Police Vehicle does not use the revolving red light and siren unnecessarily.

Parking Police Vehicles

3.9 At the scenes of emergencies, large fires, etc., operators park patrol cars away from the scene, and in such a manner so as to avoid obstructing or being hemmed in by emergency apparatus.

patrolman

Title — **4.0 POST PROCEDURES**

Reporting Time — 4.1 The patrolman reports promptly, at the designated hours, at his assigned post or as otherwise directed. He listens attentively to the orders and instructions as issued by his superior officers and makes written memorandum of such information.

Appearance & Bearing — 4.2 The patrolman at all times, while on duty, maintains an alert and business-like manner and a military bearing. He does not loiter or lounge about upon the street or in places of business nor lean against objects. He does not, without a specific reason relative to duty, conceal himself from view.

Patrol of Post — 4.3 The patrolman throughout his tour of duty maintains a faithful, diligent and continuous patrol of all parts of his post. He inspects every part of his post as frequently as possible, giving particular attention to those areas wherein the crime rate has currently been highest. He, while on patrol, reports every hour, or as otherwise directed, to the Desk Officer via callbox.

Proper Relief — 4.4 A patrolman does not, while on duty, loiter in or about the Precinct or other Department facilities. He does not abandon his post at the expiration of his tour until properly relieved, or until such time as designated by his Commanding Officer or Desk Officer.

patrolman

Leaving Post — 4.5 The patrolman does not leave his post during his tour of duty, except with the permission of his superior officer, or upon urgent police business requiring his immediate attention, nor does he enter any building except when necessity requires or in the performance of his duty. He does not, however, refuse to give assistance in the protection of persons and property near his post if called upon in any case requiring immediate attention.

Overlapping Posts — 4.6 Where motor posts overlap foot posts, the primary responsibility for security checks on business establishments on the foot post rests on the foot patrol officer. The motor patrol officer familiarizes himself with the foot post, and he in turn is responsible for that part of his post not covered by foot patrol. The motor patrol posts are set up to overlap the foot patrol posts to provide additional coverage and to have a motor patrol officer available for emergency calls and to assist the foot patrol officer when needed.

Relief of Operator — 4.7 The sector car patrolman does not leave his car at the termination of his tour of duty until properly relieved. He is considered as properly relieved when the car has been turned over to his relieving officer and he has informed the relieving officer of any special orders or instructions. If no relieving officer is present, he notifies the desk officer forthwith and complies with instructions received.

patrolman

Meal Period

4.8 Meals are obtained by the sector car operator within his sector whenever practical. He, via phone before going out of service, requests the permission of his Precinct Desk Officer to leave his post for meals and abides by the Desk Officer's decision. It is incumbent upon said Desk Officer to notify the Communications Bureau, via phone, when such permission has been granted and the telephone number at which he may be contacted during the mealtime.

Call Box Use

4.9 The sector car operator transacts all police business through the Precinct, whenever possible, using the callbox or public telephone to avoid overloading radio transmissions or leaving the patrol sector.

Hourly Ring

4.10 A patrolman regularly makes his duty calls over a police callbox at such intervals and at the time designated for the post to which he is assigned. He does not report more than two (2) minutes before nor more than ten (10) minutes after the designated time, unless detained by police duties, nor does he make two or more consecutive calls from the same callbox unless ordered to do so by his Commanding Officer.

Delay in Ring

4.11 When the performance of police duties prevents his calling over a police callbox at the designated time, he reports later, by callbox or public telephone, whichever can be done at the earliest moment, and explains the delay to the Desk Officer.

patrolman

Call Box Procedure

4.12 When reporting and when his call is acknowledged, he identifies himself and the callbox, and remains on the telephone until he has received any orders which the Desk Officer may have for him or until advised that there are no orders for him.

Memo Book

4.13 Patrolmen assigned to any Precinct Command, the Marine Bureau, the Highway Patrol Bureau, Canine Section and Aviation Section maintain a memorandum book to record all activities of their duties and actions taken by them. The memorandum book is submitted to the supervising officer for certification and is to be produced when required by the Police Commissioner, Court order or for inspection by a superior officer. Memorandum books and inserts are provided by the Department and are to be preserved by the individual officer for future reference.

Pct. Daily Bulletin

4.14 Upon receipt of the Precinct Daily Bulletin, or as soon thereafter as is practicable, he carefully reads same to familiarize himself with its contents and comply with instructions contained therein. He preserves it and passes it on to his relief at the termination of his tour of duty. Outdated copies of the Bulletin are destroyed to prevent their falling into the hands of unauthorized persons.

Patrol Route

4.15 Insofar as practicable, a patrolman does not patrol his post ac-

cording to any fixed route or schedule,but alternates frequently and backtracks, thereby avoiding the creation of a predictable pattern.

Title

5.0 COMPLAINT HANDLING PROCEDURE

Missing Persons

5.1 A patrolman receiving a complaint that a person is missing, after determining that said person is in fact within the category of a missing person, obtains all information required to complete a Missing Person Report. He notifies the Communications Bureau stating description, and all information deemed of value to enable members to identify the subject. Periodic visits are made by the patrolman on whose post the missing person resides to check the status of the subject. He notifies the Juvenile Aid Section whenever the missing person is under sixteen (16) years of age.

Lost Child Search

5.2 When a small child has been reported missing, every available police vehicle and patrolman is used in the search. A systematic and thorough search of the entire area is made, using one location as a base of operations. The search party, consisting of Department personnel and volunteers, is under the Command of the senior ranking patrol officer and he is responsible for the coordination of the efforts of all members of the group and to obtain whatever special equipment, such as lights, loudspeakers and portable radio equipment as required.

Return of Missing Persons

5.3 The Communications Duty Officer is notified immediately when the return of a missing person has been verified. The Juvenile Aid Section is notified when the return of a missing person under sixteen (16) years of age is verified.

desk officer

Title — **1.0 RESPONSIBILITIES**

Authority — 1.1 The Desk Officer is under the direct command of the Squad Commander and during the temporary absence of a Precinct Officer of higher rank, acts as Commanding Officer.

Definition — 1.2 Desk Officer is defined as that member of the Force designated by the Squad Commander to perform precinct desk duty and supervise desk personnel and desk procedures. Usually this post is assigned to a Sergeant, but can be assigned to any subordinant officer in the command.

Designated Post — 1.3 He remains at his post, within the designated room of a Department building throughout his tour of duty, except at such times as required for personal necessity, meals, official police business, or as otherwise directed by his Commanding Officer. Before leaving his post for any reason, he places a competent member of the Force in charge during his absence.

Pct. Desk — 1.4 He does not permit anyone behind the desk, except a member of the Police Department in the performance of his official duties and the following officials or their duly authorized assistants or deputies of the County of Suffolk: County Executive, District Attorney, Chief Medical Examiner, County Comptroller, and County Attorney.

Loitering Personnel — 1.5 He does not permit officers on duty to remain at the Precinct for

desk officer

periods of time longer than necessary.

Receipt of Supplies — 1.6 He receives and inspects all supplies delivered to the Precinct for quantity and quality and forwards the delivery tickets and invoices to the Supply and Procurement Bureau.

Precinct Condition & Security — 1.7 He is responsible for the security, cleanliness and condition of the Precinct and requires all members to refrain from unduly littering the premises.

Transmission of Orders — 1.8 He is responsible for the transmission of all orders or instructions from competent authority, received during his tour of duty which affect any member of the Force attached to or residing within the boundaries of his Precinct.

Equipment & Property — 1.9 He obtains from all personnel who are transferred or re-assigned within his Command such Police Department property and other items issued by the Precinct not pertinent to his new post.

Prisoner Responsibilities — 1.10 He is in immediate control of, and responsible for, the incarceration, safekeeping and humane treatment of prisoners in custody in the detention cells. He strictly complies, and exacts strict compliance by his subordinates, with all regulations as prescribed by the Rules and Procedures.

desk officer

Police Vehicles 1.11 He requires all Precinct vehicles not in operation on assigned posts to be returned to the Precinct unless otherwise directed, and after having been properly secured, the keys removed therefrom and maintained on a key board. All keys, including extra car keys, are properly tagged and maintained on the same keyboard.

Vehicle Location 1.12 He accounts for the location of each precinct vehicle to the desk officer who relieves him at the termination of his tour of duty.

Title 2.0 DUTIES

Posting Assignment 2.1 He assists the Squad Commander in posting their men, and as soon as the Squad is posted notifies the Communications Bureau Duty Officer of all assignments. He promptly notifies the Duty Officer if any changes are made in assignments throughout the tour of duty.

Duty Chart 2.2 He maintains the duty chart in the prescribed manner, noting all assignments of personnel and the time of each check call made by members of the patrol force on duty.

Maintains Records 2.3 He is responsible for the maintenance, condition and accuracy of all entries in all authorized records during his tour of duty and attests to this by his certification in the prescribed manner.

desk officer

Daily Journal Entries 2.4 He notes in the Daily Journal the appearance at the precinct of the Police Commissioner or members of the following: Chaplains' Section, Office of the Chief of Operations, Office of Chief of Personnel, Office of the Chief of District, Office of the Chief of Detectives, Legal & Inspection Bureau and any other member, regardless of rank, who so requests. The entry states the time of arrival and departure and the reason for the appearance.

Crossing Guard Schedule 2.5 He maintains a schedule of all crossing guard posts and the list of personnel assigned and substitute guards. In the event of the absence of a crossing guard he designates and notifies a substitute or, if no substitute is available, a member of the Force to cover the post pending the return of the regular guard to duty.

Title 3.0 COMMUNICATIONS

Message Distribution 3.1 He receives and distributes or causes to be distributed, as addressed, all messages and documents from Headquarters.

Teletype & Phone Messages 3.2 He is responsible for the reception of all telephone and teletype messages at the precinct and the taking of prompt action as indicated therein.

Outgoing Teletype Messages 3.3 He checks with Central Records, Special Crime Bureau and Detective Squads concerned before contacting

the Communications Bureau to send teletype messages regarding lost, stolen, or recovered motor vehicles, boats, firearms, or other items.

Operation Failure

3.4 In the event of failure in the operation of precinct teletype, radio or telephone he promptly notifies the Communications Bureau Duty Officer and the appropriate utility repair service bureau by any available means.

Phone Answering Procedure

3.5 When using Department telephones, he adheres to the prescribed procedure. Incoming calls are answered immediately. He identifies himself by: Suffolk County Police Department, Precinct Number, rank and name. Use the hold key to keep calls on the line. No unnecessary outgoing calls are made and all telephone conversations are as brief as is feasible.

Title **4.0 CITIZEN - REQUESTS**

Relay of Information

4.1 Upon receipt of a report from a citizen requiring police action, he immediately telephones all pertinent information to the Communications Bureau.

†Assistance to Citizens

4.2 Whenever legally possible and consistent with Departmental Rules and Procedures, he complies with requests by citizens for information, advice or assistance, or if the matter in question be within the jurisdiction of another authority, refers him to the proper authority.

Headlamp Inspections

4.3 When requested by a citizen, he conducts the required headlamp inspection of a repaired defective headlamp and completes the necessary affidavit. He then records the inspection in the Daily Journal.

Title **5.0 UNUSUAL INCIDENT EMERGENCY**

Notification to Communication Bureau

5.1 He immediately telephones the Communications Bureau Duty Officer of any unusual accident, disorder, emergency, explosion, fire, flood condition, riot, homicide, robbery, serious felonious assault, drowning, labor dispute or any incident deemed reasonably important to the Police Commissioner, his staff officers or the news media. He immediately telephones the Duty Officer of any new development concerning the foregoing.

Information to Commanding Officer

5.2 He keeps his Commanding Officer informed as to events of importance as enumerated above and such other matters and conditions requiring his attention.

Miscellaneous Notification

5.3 He promptly notifies personnel of the Detective Division or the Juvenile Aid Sectionwhen circumstances require their participation in an incident covered by members of the Precinct.

supervising officer

Title	**1.0 RESPONSIBILITIES**
Enforcement of R & P	1.1 A supervising officer is responsible for the enforcement of these Rules and Procedures and all authorized orders. He is responsible for the critical supervision of his subordinates and their strict compliance to these Rules and Procedures and all authorized orders. He is also charged with the proper maintenance and condition of departmental equipment within the Command and promptly reports any condition requiring attention to his superior officer.
Central Supervision	1.2 A supervising officer, is charged with exacting the proper performance of police duty from members subject to his supervision. He assists and instructs the members in the discharge of their duties and performs any other duties assigned by competent authority.
Inspection of Personnel	1.3 A supervising officer inspects all members subject to his supervision to ascertain that they are properly uniformed, equipped and meet the standards of personal hygiene. He advises them of all important matters.
Title	**2.0 DUTIES**
Hourly Ring	2.1 A supervising officer on patrol calls the desk officer by departmental telephone at least every hour.

supervising officer

Information During Emergency	2.2 A supervising officer during an emergency, keeps the desk officer informed of developments, or as otherwise directed by his Commanding Officer.
Memo Book Inspection	2.3 A supervising officer inspects at least once each tour of duty, the memorandum books of members on duty, and certifies that a full and accurate record of duty performed,alarms, and all other necessary information has been entered therein. The supervising officer certifies same, entering date, time and signature.
Police Booth Inspection	2.4 A supervising officer visits all booths at least once during each tour of duty, and is responsible for the cleanliness and proper equipment thereof, and sees that they are properly lighted inside and outside at night and extinguished during daylight.
Special Posts Inspection	2.5 A supervising officer visits at least once during each tour of duty the members assigned to special posts, hospitals and Courts located on their posts.
Maintains Memo Book	2.6 A Sergeant assigned to any Precinct Command, the Marine Bureau, the Highway Patrol Bureau, Canine Section and Aviation Section maintains a memorandum book to record all activities of his duties and actions taken by him. He submits his memorandum book to his supervising officer for certification.

supervising officer

He produces it when required by the Police Commissioner, Court order or for inspection by a superior officer. Memorandum books and inserts are provided by the Department and are to be preserved by the individual officer for future reference.

Title — 3.0 COMMAND 6000 CAPTAINS —SEE ATTACHED—

Duties — 3.1 Duties of Command 6000 Captains

Direct & Coordination — A. Direct the efforts of all personnel within the Patrol Division toward the fulfillment of those facets of the police mission, the responsibility for which is charged to said division in particular, and the coordination of the efforts of the department as a whole through supervision of all members, both as individuals and commands, of said Patrol Division on a staff level.

Inspect Installations — B. Travel to all installations within the Police District operated by the Patrol Division, throughout their tours of inspection, and observe the efforts and the results thereof, of all Patrol Division personnel.

Supervise Procedures/ Policies — C. Offer critical advice and order remedial measures be taken when deviations from approved departmental procedures and/or policies are noted and such on-the-spot action is deemed advisable. If otherwise, the observations and recommendations are to be reported via internal correspondence to the Chief of District for his consideration.

supervising officer

Guidelines — D. Conform with the following:

Liaison with Communication Bureau — 1. Maintain constant liaison with the Communications Bureau at all times while on duty.

Respond to Incidents — 2. Respond to all such incidents within the Police District, which by their nature may indicate the advisability of the presence of a representative of Command 6000.

Assist at Emergencies — 3. Provide direction and assistance at emergencies or unusual disorders. Implement existing plans as needed.

Correct Deviation from R&P — 4. Detect and correct deviations from accepted departmental procedures and policies.

Evaluate Procedures — 5. Evaluate procedures, plans and assignments within the Police District and correct or make recommendations to the Chief of District.

Administrative Responsibilities — 6. Accept administrative responsibility in the absence of a superior.

Line of Duty Injuries — 7. Respond to and assist whenever possible at the scene of any incident in which a departmental member may be injured in the line of duty.

Coordinate Field Operations — 8. Coordinate field operations involving more than one (1) command.

Discipline & Morale — 9. Investigate matters of discipline and morale within the jurisdiction of the Chief of District.

Records & Personnel — 10. Examine at irregular intervals records and personnel within the jurisdiction of the Chief of District for conformity with the Rules and Procedures.

Installation & Equipment — 11. Inspect installations and equipment of this Department for serviceability, cleanliness and sufficiency.

supervising officer

Public Relations	12. Maintain a high level of community relations with the public and news media.
Tour Report	13. Prepare a concise report at the completion of each tour of duty of all action taken.
Keep Informed	14. Insure that prompt and detailed information is received by him from the Communications Bureau regarding serious, unusual or newsworthy incidents.
Additional Duties	E. In addition to the above enumerated duties, he performs such other duties as prescribed by the Police Commissioner and the Chief of District.

commanding officer

Title	**1.0 RESPONSIBILITIES**
Administration	1.1 The Commanding Officer exercises control over all members of his Command. He is held responsible for the accomplishment of the police mission through the effective administration and operation of his Command.
Deployment of Personnel	1.2 He assigns members of his Command in such a manner as to effectively accomplish the police mission in the area under his command in full compliance with the Rules and Procedures and is empowered to redeploy his personnel in accordance with work load requirements to maintain a distribution of his force among shifts in proportion to the work load.
Statistical Analysis	1.3 He analyzes departmental statistics to ascertain troublesome areas in his Command and takes proper remedial action.
Discipline & Efficiency	1.4 He is responsible for the maintenance of discipline and efficiency of the personnel of his Command and their full compliance with the Departmental Rules and Procedures, appropriate manuals, and all orders of the Police Commissioner or his Deputies, or any other superior officer.
Department Property & Equipment	1.5 He is responsible for the maintenance of the good order and sanitary conditions of all Departmental building and parts thereof, under his command and is accountable for

the furnishings and equipment assigned thereto, making frequent inspections and promptly reporting such items in need or replacement or repair to the proper authority. In like manner he inspects and reports all Departmental vehicles, weapons, and other special equipment assigned to the Command in need of replacement or repair.

Complaint Investigation

1.6 He is expressly required to see that all complaints reported within his Command are promptly and properly investigated and appropriate action taken.

Title 2.0 DUTIES

Assignment Changes

2.1 He reviews and approves, or directs such changes in assignments of personnel as deemed advantageous to the accomplishment of the police mission under his command.

Emergency Manpower

2.2 He, when conditions warrant, requests the aid of the Division Commander for such additional temporary manpower as deemed necessary to meet the current or anticipated emergency.

Issuance of R.&P.

2.3 He insures that, all members of his Command are provided with a copy of the Departmental Rules and Procedures and appropriate manuals and are properly instructed in the contents thereof. He checks their knowledge of their duties as to best accomplish the police mission.

Compliance Procedures

2.4 He insists that all members of his Command comply with standard operating procedures, giving special attention to those failures that may jeopardize the safety of his men, the rights and liberties of private persons and the reputation of the Police Department.

Instruction on Conduct

2.5 He instructs, or causes to be instructed, the members of his Command, in regards to their conduct, both on and off duty, in order to avoid actions deemed detrimental to the good order and efficiency of the Police Department.

Inspections

2.6 He makes frequent inspections in the area under his Command at irregular times noting all violations of laws and ordinances, especially those pertaining to gambling, vice, narcotics, public morals, alcoholic beverages, and other conditions requiring attention. He, at unannounced and unusual hours, makes tours of inspection of officers on duty to establish that their duties are being properly performed. He takes such remedial action as required to correct any such violations noted.

Outside Jurisdiction

2.7 He refers to the proper Command all requests by outside jurisdiction for police assistance.

Line of Duty Death

2.8 He carefully investigates the reported death of any member of the Police Department or Force while acting in the discharge of duty

commanding officer

within his Command and forwards, through official channels, a written report in full detail to the Police Commissioner.

Department Recognition

2.9 He submits a comprehensive written report to the Division Commander when a member of his Command, or of another Command, if brought to his attention, performs any exceptional act, or deed of particular merit which, in his opinion is worthy of official recognition. The Commissioner may excuse such members for one tour of duty. He also, in like manner, reports those instances in which a civilian has rendered assistance to the Department in the apprehension of a criminal or in an emergency.

Unusual Incident Notification

2.10 In the event of riots, bombings, explosions, destruction of property or other forms of violence growing out of labor or industrial disputes or minority tensions, or any other unusual incidents reasonably deemed of importance to the Police Commissioner or his Staff or the news media, he promptly notifies the Division Commander and the Communications Bureau.

Case Referrals

2.11 He makes decisions as to action to be taken in cases referred to him by the Communications Bureau Duty Officer.

Arrest Review

2.12 He reviews the circumstances of the arrest of each person arrested by members of his Command to

commanding officer

ascertain that all are legally detained.

Resolves Arrest Decisions

2.13 He decides questions relative to the action to be taken on arrests made by members of his Command and by other members of the Department whose Commanding Officer is not available for a decision.

Liaison with Command

2.14 He communicates frequently with his Command when making inspections in the area under his Command, and when absent keeps the Command informed where he may be found. He frequently tests the knowledge of personnel assigned to his Command as to conditions within the area of their responsibility, persons residing or doing business there, and the nature of business being transacted.

Equipment-Termination of Service

2.15 He obtains all Police Department property in the possession of a member of the Department who is suspended, resigns, retires, is dismissed, has been given a leave of absence for a period of over thirty (30) days or during active military leave. He also obtains from the above mentioned persons all revolvers and pistols in their possession. He immediately obtains all Police Department property and all revolvers and pistols from the effects of a deceased member or other employee. He promptly has all items acquired as above invoiced as listed in the prescribed manner to the Quartermaster Section.

Excuse from Duty-Court

2.16 He may excuse members of his Command below the rank of Captain, on duty from 0001 to 0800 at 0400, who are under proper subpoena or other notification, compelling their appearance before 1200 the same day.

Exchange of Tours

2.17 He may grant permission to members of his Command performing similar duty, to exchange tours, relieve early or late, when agreeable to both, and will not interfere with police service. This privilege is not granted in conjunction with leaves of absence or in allowing members affected to perform two consecutive tours of duty. The names of the members concerned and particulars are entered on the appropriate Duty Charts and the Attendance Data Card is noted as outlined by these Rules and Procedures.

Crime Scene Investigation

2.18 He requires members of his Command to carefully preserve crime scenes intact, prohibiting the entrance into the area of all unauthorized persons pending the arrival of Detective Division personnel, and coordinates the crime investigation efforts of the members of his Command with those of the Detective Division.

Liaison with Local Government

2.19 He shall endeavor, through close association and cooperation with local boards of government and civic groups, to foster a relationship mutually beneficial to this Department and the general public.

Title

3.0 PRECINCT COMMANDER

Precinct Syllabus

3.1 The precinct commander maintains for members of his Command, a syllabus which establishes the sector boundaries, foot patrol posts, school and church crossing posts, special posts, locations of call boxes and relief points, duties of officers assigned to special posts and other pertinent information.

Planning Bureau Approval

A. He forwards the precinct syllabus and any amendments thereto, before printing and distribution, through channels to the Planning Bureau for review before final approval by the Police Commissioner.

Distribution

B. He causes the distribution of a printed copy of the precinct syllabus and/or any approved amendments thereto, to each member of the Force within his command for insertion in the R & P directly after the last index page; the insertion of a printed copy of the precinct syllabus and/or any approved amendments thereto in the command copies of the R & P as above; the forwarding of one (1) copy and/or any approved amendments thereto to Detectives Squad Commander for informational purposes.

Daily Bulletin

3.2 He causes a ''Precinct Daily Bulletin'' to be printed and distributed daily. The bulletin is to contain information pertinent to his precinct in particular and the Department as a whole in general. It includes, but is not limited to,

items such as;stolen motor vehicles of special interest, stolen property of any nature that can be readily observed by patrols, missing and/or wanted persons, notifications to precinct personnel from teletype and other sources. The bulletin may be printed on both sides of the sheet and the officer's name who prepares the bulletin must appear after the last bulletin entry. The precinct commanding officer is responsible for the context of the ''Precinct Daily Bulletin'' in all instances.

Crossing Guard Administration

3.3 He is, within his Precinct, responsible for the administration of the crossing guards,their training and re-training, their inspection for appearance. He ascertains the times of pupil assembly and dismissal for each school within the Precinct and designates the times during which these school and church crossings are to be covered.

Crossing Guard Survey

3.4 He, upon receipt of a request for additional crossing guards, requests a survey be made of the locations by the Commanding Officer of the Highway Patrol Bureau. No such additional guard may be appointed unless so recommended as a result of the findings of said survey.

Prisoner Detention

3.5 Commanding Officers of Precincts having detention cells are responsible for the detention of

prisoners in accordance with New York State Department of Correction regulations relative thereto. They frequently check the Detention Log and the manner in which entries are made and exact strict compliance with instructions.

Probationary Patrolman

3.6 He requires a written report upon proper designated forms to be submitted by each Squad Leader under whose supervision probationary patrolmen have been assigned. The report appraises the manner in which the assigned duties of each probationary patrolman have been carried out during the period he has been assigned to said Squad Leader and will be submitted to the Commanding Officer of Personnel Records Section eighteen days prior to the expiration of the probationary periods, or as otherwise directed,after having been reviewed and signed by the Precinct Commanding Officer. If, during the remaining 18 days of such probationary period any violations of the Rules and Procedures are committed by said probationary patrolman, or other incident concerning him deemed as detrimental to the Police Department is observed, he immediately notifies Personnel Records Section. If a probationary patrolman is transferred to another Command prior to the expiration of his probationary period, the original Commanding Officer forwards all data concerning such probationary patrolman to the Commanding Officer of the

new Command who submits same, together with a report of the manner in which his duties were performed while in the new Command, to the Commanding Officer of Personnel Records Section at the expiration of the probationary period or as otherwise directed.

Communications Bureau Assignment

3.7 He, upon request of the Communications Bureau Duty Officer, immediately assigns such Precinct personnel as required to provide adequate manpower at the Communications Bureau, such assignments to be temporary in nature.

Precinct Desk Assignment

3.8 He designates the members within his Command performing desk duty to be responsible for the condition and correctness of the authorized books and records used by them.

Recall Department Equipment

3.9 He obtains all Police Department property in the possession of a member of the Force, or crossing guard who is suspended, resigns, retires, is dismissed, has been given a leave of absence for a period of thirty days or during active military leave. Crossing guards are authorized to retain their badges and uniforms upon completion of the school term. In the event they do not return for employment upon the re-opening of school the following term, it shall be the responsibility of the Precinct Commanding Officer to obtain the issued equipment.

Supervision of Investigations

3.10 He requires his duty Lieutenants and Patrol Sergeants to supervise the Patrolmen's preliminary investigations of crimes, to utilize all available resources toward the apprehension of the perpetrator or suspects, the location and interviewing of witnesses and the recovery of stolen property.

Police Matrons

3.11 He compiles and causes to be maintained at the Precinct a list of female persons subject to call to perform the duties of matron when required to safeguard female prisoners or the care for lost children brought to the Precinct. It is the matron's duty to inspect such prisoners immediately upon arrival at the Precinct and at 30 minute intervals while in the detention cells and make the required entries in the Detention Log.

Road Block Plans

3.12 He compiles and maintains a list of all banks and financial institutions within his Precinct. In conjunction with said list a comprehensive Road Block Plan is drawn up, stating in full detail the locations of all participating Precinct vehicles to most effectively seal off any given area within, or adjacent to, the Precinct. He insures that the list and Road Block Plan are frequently revised to conform with changing conditions. Copies of both, and revisions thereto, are promptly forwarded to the Planning Bureau, the Chief of District and the Communications Bureau.

commanding officer

Duty Schedule	3.13 To afford the presence of the Precinct Commanding Officer or Executive Officer at the Precinct, Monday through Saturday, from 0900 to 1800, a duty scheduled is adopted to conform accordingly by the Precinct Commanding Officer.
Title	**4.0 EXECUTIVE OFFICER**
Duties & Responsibilities	4.1 The precinct commanding officer is assigned an executive officer to serve as his administrative aide and performs the following duties. Such duties are, but not limited to;
Police Mission	A. Assume responsibility for the accomplishment of the police mission through the effective administration and operation of the Command in the absence of the commanding officer.
Enforce R.& P.	B. Responsibility for the enforcement of these Rules and Procedures and all authorized orders.
Comply to R. & P.	C. Responsibility for the critical supervision subordinates and their strict compliance to these Rules and Procedures and all authorized orders.
Supervision	D. Take suitable action in the case of any laxity, misconduct, incompetence or neglect of duty coming to his attention in any manner.
Familiar with Duties	E. Thorough familiarization of the assignments and duties of all subordinate officers.
Counsel Subordination	F. Counsel subordinate officers in the performance of their duties on his own initiative or as requested.

commanding officer

Records & Files	G. Supervise the uniform reporting procedures and the records and files of the Command and insure their conformity to these Rules and Procedures.
Inspections	H. On sight inspection of personnel, equipment, vehicles and Command installations.
Planning & Training	I. Provide continuity and assistance for planning and in-service training.
Coordination	J. Co-ordinate operations between squad and plainclothes details.
Draft Schedules	K. Draft schedules required for assignments other than the standard tour rotation schedule.
Public Relations	L. Maintain high level of police-community relations.
Memoranda	M. Prepare memoranda pertinent to the Command and insure dissemination thereof.
Additional Duties	N. Perform such other duties as directed by the Commanding Officer.

In the

Supreme Court of the United States

OCTOBER TERM, 1974

No. 74—1269

JOHN L. BARRY, Commissioner of the SUFFOLK COUNTY POLICE DEPARTMENT,

Petitioner,

against

THOMAS DWEN, as President of the Suffolk County Patrolmen's Benevolent Association and THOMAS DWEN, Individually,

Respondent.

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Second Circuit

BRIEF OF RESPONDENT IN OPPOSITION

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1974

No. 74—1269

JOHN L. BARRY, Commissioner of the SUFFOLK COUNTY POLICE DEPARTMENT,

Petitioner,

against

THOMAS DWEN, as President of the Suffolk County Patrolmen's Benevolent Association and THOMAS DWEN, Individually,

Respondent.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

BRIEF OF RESPONDENT IN OPPOSITION

Argument

The Second Circuit Court of Appeals decision in *Dwen* v. *Barry*, 483 F.2d 1126 (2nd Cir. 1973), is consistent with the Eighth Circuit Court of Appeals decision in *Stradley* v. *Anderson*, 478 F.2d 188 (8th Cir. 1973), with respect to the

constitutional questions raised. Both Circuits hold:

> that choice of personal appearance is an ingredient of an individual's personal liberty, and that any restriction on that right must be justified by a legitimate state interest reasonably related to the regulation. *Dwen* v. *Barry*, at 1130; Accord, *Miller* v. *Ackerman*, 48 F.2d 920, 922 (8th Cir., 1973).

The distinction in the two cases is based upon the findings of the lower court in each circuit. See, *Burback* v. *Goldschmidt*, 521 P.2d 5, 8 n.5. In *Stradley*, the lower court found that there was sufficient evidence to uphold the regulation, whereas in *Dwen*, the lower court found that there was insufficient evidence and struck down the regulation. A conflict based upon findings of fact should not be reviewed by this Court. See also, *United States* v. *Oregon State Medical Soc.*, 343 U. S. 326, 332, 72 S.Ct. 690, 695, 92 L.Ed. 978; *United States* v. *United States Gypsum, Co.*, 333 U.S. 364, 395, 68 S.Ct. 525, 542; Rule 52 (a) F.R.C.P.

This distinction also applies to the case of *Kamerling et al.* v. *O'Hagan*, 2nd Cir., decided March 18, 1975 Docket No. 74—2155 and cited by petitioner, in support of his position.

Parenthetically, it should be pointed out that the result reached in *Stradley* has been questioned by its author in the recent case of *Rinehart* v. *Brewer*, 491 F.2d 705, 707 n.1 (8th Cir., 1974):

> On reflection there was no evidence developed in *Stradley* which demonstrated that a police officer could not carry out his duties just as efficiently with his own hair style as compared to the one insisted upon by his superiors.

Although the petitioner claims that *Dwen* is in conflict with *Greenwald* v. *Frank*, 70 Misc.2d 632, 334 N.Y.S. 2d

680, judgment affirmed as modified, 40 A.D. 2d 717, 337 N.Y.S. 2d 225, affirmed 32 N.Y.2d 862, 364 N. S. 2d 529, such a conflict does not exist since the *Greenwald* decision was not based upon constitutional grounds. *McCune* v. *Frank*, E.D.N.Y., Decided December 13, 1974, docket No. 74C 1279. The Appellate Division specifically stated at 337 N.Y.S.2d 226:

> In our opinion this regulation does not raise issues which rise to the dignity of constitutional questions.

As to the issue of whether the lower court should have refrained from deciding *Dwen*, based upon the decision in *Greenwald*, this issue not having been raised below should not be reviewed by this Court. *Walters* v. *City of St. Louis, Mo.*, 347 U.S. 231, 233, 74 S.Ct. 505, 507, 98 L.Ed. 660.

Not only was the original decision by the Second Circuit in *Dwen*, a final determination as to the constitutional issues raised, thereby precluding the petitioner from obtaining review at this time, *Gulf Refining Co.* v. *United States*, 269 U.S. 125, 135-136, 46 S.Ct. 52, 53, 70 L.Ed. 195, but in view of the fact that this court has consistently refused to grant certiorari in similar cases, *Ferrell* v. *Dallas Independent School District*, 392 F.2d 697 (5th Cir. 1968), cert. denied, 393 U.S. 856, 89 S.Ct. 98, 21 L.Ed. 2d 125; *Breen* v. *Kahl*, 419 F.2d 1034 (7th Cir., 1969), cert. denied 398 U.S. 937, 90 S.Ct. 1836, 26 L.Ed. 2d 268; *Jackson* v. *Dorrier*, 424 F.2d 213 (6th Cir., 1970), cert. denied, 400 U.S. 850, 91 S.Ct. 55, 27 L.Ed. 2d 88; *Stevenson* v. *Board of Education of Wheeler County, Georgia*, 426 F.2d 1154 (5th Cir., 1970), cert. denied, 400 U.S. 957, 91 S.Ct. 355, 27 L.Ed. 2d 265; *King* v. *Saddleback Junior College District*, 445 F.2d 932 (9th Cir., 1970), cert. denied. 404 U.S. 979, 404 U.S. 1042, 92 S.Ct. 703, 30 L.Ed. 2d 736; *Freeman* v. *Flake*, 448 F.2d 258 (10th Cir., 1971), cert. denied, 405 U.S. 1032, 92 S.Ct. 1292 31 L.Ed. 2d 489; *Landsdale* v.

Tyler Junior College, 470 F.2d 659 (5th Cir., 1972), cert. denied, 411 U.S. 986, 93 S.Ct. 2268, 36 L.Ed. 2d 964, and as the petitioner fails to assert any new compelling ground for review, the present petition should also be denied.

CONCLUSION

For the reasons set forth above, the present petition for a Writ of Certiorari should be denied.

Dated: May 2, 1975.

Respectfully submitted,

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Supreme Court, U. S.
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IN THE

Supreme Court of the United States

OCTOBER TERM, 1974

No. 74-1269

JOHN L. BARRY, Commissioner of the SUFFOLK COUNTY POLICE DEPARTMENT,

Petitioner,

against

THOMAS DWEN, as President of the Suffolk County Patrolmen's Benevolent Association and THOMAS DWEN, Individually,

Respondent.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

PETITIONER'S BRIEF

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1974

No. 74-1269

JOHN L. BARRY, Commissioner of the SUFFOLK COUNTY POLICE DEPARTMENT,

Petitioner,

against

THOMAS DWEN, as President of the Suffolk County Patrolmen's Benevolent Association and THOMAS DWEN, Individually,

Respondent.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

PETITIONER'S BRIEF

Citations to Opinions Below

The first opinion of the District Court for the Eastern District of New York is printed in the Appendix of the petition for certiorari at p. 19a and is reported in 336 F. Supp. 487. The opinion of the Circuit Court of Appeals is printed in the Appendix of the petition for certiorari at p. 9a and is reported in 483 F. 2d 1126. The second opinion of the District Court is printed in the

Appendix of the petition for certiorari at p. 5a and is unreported. The judgment without opinion of the Second Circuit Court of Appeals is printed in the Appendix of the petition for certiorari at p. 2a.

The conflicting opinion of *Stradley* v. *Anderson,* 478 F.2d 188 is printed in the Appendix to the petition for certiorari at p. 23a and the District Court opinion of *Stradley* v. *Anderson,* 349 F.Supp. 1120 is printed in the Appendix to the petition for certiorari at p. 29a.

Jurisdiction

The judgment of the Circuit Court of Appeals was entered on January 9, 1975 (Pet. for Cert. p. 2a). The jurisdiction of this Court is invoked under 28 U.S.C., Section 1254 (1) and Rule 19 (1) (b) of the Supreme Court Rules.

Question Presented

Whether a police department may constitutionally regulate the length of hair of individual police officers based upon the legitimate state interest of either safety and/or the morale factor of maintaining uniformity of discipline and appearance in a quasi-military organization such as the Suffolk County Police Department.

Statute Involved

The statutory provision involved is the Constitution of the United States, Amendment XIV, Section 1, U.S.C.A. Const. Amend. XIV, Section 1. The section is printed in the petition for certiorari at p. 1a.

Statement

By service of an order to show cause dated August 4, 1971, together with a summons and complaint, an action

was commenced in the United States District Court for the Eastern District of New York to enjoin John L. Barry, Commissioner of the Suffolk County Police Department, from enforcing General Order No. 71-1 which involved grooming standards for police officers. More particularly, the rule involved certain guidelines as to the length of a police officer's hair as well as regulating the growth of mustaches, beards and sideburns. The action had been commenced in the Federal District Court on the basis that the plaintiff's rights of free expression, due process and equal protection as provided in the First and Fourteenth Amendments of the United States Constitution had been violated.

By memorandum of decision and order dated November 8, 1971, Chief Justice Mishler of the District Court denied a motion for a preliminary injunction enjoining the Commissioner of the Suffolk County Police Department from enforcing the regulation. The Court held that uniformity of dress is part of the discipline of the local police department and a visible sign of the presence of the law. The Court further held that regulations involving dress and grooming should be left up to officials who are aware of local customs and taboos and not to the Courts.

On November 30, 1971, by memorandum of decision and order, the Hon. Jacob Mishler dismissed the complaint based upon his decision and order dated November 8, 1971. Thereafter, on December 6, 1971, plaintiff filed a notice of appeal to the United States Circuit Court of Appeals for the Second Circuit from both memorandum decisions and orders of the Hon. Jacob Mishler.

On August 22, 1973, the United States Court of Appeals for the Second Circuit reversed the decisions and orders of the Hon. Jacob Mishler and remanded the case to the District Court for trial. The Second Circuit Court of Appeals held that the choice of personal appearance is an ingredient of an individual's personal liberty and any

restriction on that right must be justified by a legitimate state interest. The Court further held that there is a substantial constitutional question raised by the regulation of the plaintiff's hair length. Since the Court felt that there had not been a significant justification presented in the affidavit and supporting papers submitted in the District Court as to a legitimate state interest, the Second Circuit Court remanded the case for trial of the issues of fact, stating that the burden of proof was on the Commissioner at trial.

A plenary hearing was held before the Hon. Jacob Mishler on April 3, 1974 and as a result of that hearing, by memorandum of decision and order dated May 30, 1974, the Hon. Jacob Mishler granted judgment in favor of the plaintiffs declaring the hair regulation of the Suffolk County Police Department unconstitutional in that it violated the due process clause of the Fourteenth Amendment because the defendant Commissioner had failed to establish a legitimate state interest requiring hair length restrictions on members of the police department. A judgment was entered on June 19, 1974 permanently enjoining the Suffolk County Police Commissioner from enforcing the hair regulation and declaring the Rules of the Suffolk County Police Department with respect to same unconstitutional. On June 18, 1974 a notice of appeal was filed by the defendant Police Commissioner from said judgment to the United States Court of Appeals for the Second Circuit.

By order dated January 9, 1975, based upon the transcript of the record from the United States District Court for the Eastern District of New York, the United States Court of Appeals for the Second Circuit affirmed the judgment of the District Court without opinion.

Summary of Argument

The Suffolk County Police Department by its previous Police Commissioner, John L. Barry, amended Chapter 2 of the Rules and Procedures of the Suffolk County Police Department to include a regulation as to grooming standards to be adhered to by individual police officers effective August 1, 1971 (A. 57-58). The regulation governed the length of hair the individual police officer could have on his head as well as the growth of beards, mustaches and sideburns. The regulation also stated that members of the force shall be neat and clean at all times. Specific standards for the length of hair followed the general clause as to maintaining neatness and cleanliness. The regulation was eventually amended effective November 15, 1973 with respect to sideburns, mustaches and the length of hair on the head (A. 48). The avowed purpose of the amendment as stated in Special Order No. 2-2.16 was an effort by the new Commissioner of Police to allow individual officers to conform to the general change of men's hairstyles.

The plaintiff, Thomas Dwen, complains not of the reasonableness of the regulation or the amendment thereto, but rather the right of the Police Commissioner to issue any grooming standards with respect to hair whether it be on the head or facial. He does not complain of that portion of the regulation which states that an officer shall be neat and clean at all times. The assertion in the complaint filed in the District Court is that to impose any restriction on his hair length violates his right of free expression, due process and equal protection as provided in the First and Fourteenth Amendments to the Constitution of the United States (A. 62).

Taking Mr. Dwen's claims in order, then, one must consider if the regulation violated Mr. Dwen's right of self expression or speech as enunciated in the First Amendment. A look at the record which was before the District Court

for the Eastern District of New York and the Second Circuit Court of Appeals discloses that there was no semblance of evidence advanced by Mr. Dwen as to *how* the regulation violated his First Amendment rights. Nothing in the complaint specifically states how he wished to express some idea or thought by the wearing of hair longer than the regulation would permit. No testimony was *ever* advanced by Mr. Dwen (neither he nor anyone ever testified in the case on plaintiff's behalf (A. 39) as to a symbolic speech argument similar to that advanced by the students who wished to wear black arm bands in *Tinker* v. *Des Moines School Dist.*, 393 U.S. 503, 89 S.Ct. 733, 21 L.Ed. 2d 731 (1969). Thomas Dwen simply wants to subjectively govern his own appearance with respect to hair. Since he advanced no other reason for a first amendment right this court cannot conclude that his personal preference for hair length is a First Amendment right. Indeed, the 2d Circuit did not seriously give credence to such an argument (cert. 17a). Nor did Justice Mishler in his second opinion when he declared the regulation unconstitutional (cert. 8a).

The second assertion by Thomas Dwen is that the choice of his personal appearance was governed by the due process clause of the Fourteenth Amendment. The Second Circuit agreed with him as their argument (cert. 17a) and the second decision by the District Court is based upon this amendment (cert. 8a). The rationale of the District Court and the Second Circuit Court of Appeal is that the due process clause of personal liberty of the 14th Amendment protects the police officer from arbitrary infringement on his personal liberty to choose any hair length he desires.

The so-called "liberty" of the choice of personal appearance is being equated by the court to a fundamental liberty equivalent to e.g., the right of marital privacy. It is the position of the Commissioner of the Suffolk

County Police Department that at best the choice of personal appearance can only be considered a lesser liberty and does not rank in the order of the right of privacy or freedom of speech. In interpreting the present regulation then, the Police Commissioner is at least afforded the presumption of regularity and honest motivation which generally would attach to his official acts. Even if challenged in Court as to the reasonableness of the regulation, the Commissioner's only burden would be the "rational relationship" test which certainly affords the individual police officer the protection under the Fourteenth Amendment from the arbitrary interference of the Police Commissioner into his personal choice of appearance (See *Williamson* v. *Lee Optical of Oklahoma, Inc.*, 348 U.S. 483, 75 S. Ct. 461, 99 L. Ed. 563). Using that rationale, the arguments advanced below by the Commissioner that the legitimate state interest he sought to promote of having uniformity of morale and discipline in the ranks and also advancing safety for the officer should, under the "rational relationship" test have been sufficient to sustain the intended objectives. Looking at the record, the Police Commissioner showed a relationship between the rule and its objectives and it was then incumbent upon Thomas Dwen to show the regulation was arbitrary and capricious. Since he did not do so, the complaint should have been dismissed.

Further, there were mere conclusory allegations stated in the complaint as to the unconstitutionality of the regulation. The regulation should have been accorded the presumption of constitutionality which is afforded the majority of administrative regulations or to statutes in general. (McKinney's Statutes, ¶ 150.) The mere assertion of unconstitutionality should not be enough to shift the burden of proof upon a municipality to prove that a regulation of one of its departments *is* constitutional.

There are very few areas where this Court has seen fit to shift the heavy burden of proof upon municipalities to show that a statute or rule is in effect constitutional and those cases have only been where fundamental rights such as freedom of speech, press or assembly or other fundamental liberties guaranteed citizens under the Fourteenth Amendment have been at issue. The grooming of hair is not such a fundamental constitutional right as to be governed by any of the amendents.

The fundamental right, if anything, is that the State should not arbitrarily interfere with the personal appearance of its citizens. No serious claim was made by Thomas Dwen as to the arbitrariness of the regulation as it applied to him or any other member of the police force.

Lastly, Thomas Dwen asserted that the grooming regulation violated his right to equal protection under the laws. Admittedly the hair regulation only applies to males but no argument was made by Mr. Dwen as to *how* he was denied equal protection.

Even if this court were to deem the length of hair to be such an ingredient of personal liberty as to be a substantive constitutional right as the Second Circuit Court of Appeals deemed it to be (cert. 17a), the arguments by the police Commissioner as to the legitimate State interest sought to be promoted should have also been sufficient for the Circuit Court to dismiss the complaint. The reasoning of the Court in *Stradley* v. *Anderson* (cert. 27a), i.e., that uniformity in grooming is a legitimate State interest certainly showed the weight of the State's interest over the individual police officer's choice of personal appearance. Safety was another legitimate state interest advanced by the Police Commissioner. Both of those interests outweighed the interest of the individual police officer even if

one interprets the choice of personal appearance as a substantive right.

Presently, there is an evolving rule in the Federal Courts concerning the abstention of the Federal Courts from interfering with matters which are being resolved in the State Courts in certain matters where the jurisdiction of the State and Federal Courts are concurrent. As a matter of comity, because of the decision in *Greenwald* v. *Frank*, 70 Misc. 2d 632, 334 N.Y.S. 2d 680, affd. 40 A. D. 2d 717, 337 N.Y.S. 2d 225, affd. 32 N. Y. 2d 862, 346 N.Y.S. 2d 529 (1973), wherein an identical hair regulation was involved, the Federal Court should have refrained from deciding the issue anew. The State Courts had treated the personal choice of hair appearance as not a fundamental liberty but, rather, a lesser liberty and they had by their decisions resolved the issue as to all police departments in the State of New York. When the Appellate Division, Second Department stated that the case did not rise to the dignity of constitutional issue they were implicitly stating the choice of hair grooming was not a fundamental liberty. Their decision was unanimously upheld by the Court of Appeals of the State of New York (*Greenwald* v. *Frank, supra*).

Finally at issue was the quasi-military nature of a police force such as the Suffolk County Police force. The cases dealing with hair involving the military have been resolved in favor of the military. The police commissioner does not advance the argument that the choice of personal appearance with respect to hair is to be completely surrendered as in the military cases, but merely modified and always be subject to the rationality test in the Courts. This is the extent the military cases have application to the argument that since the Suffolk County Police Department is *quasi* or *semi* or *para* military in nature—the reasoning and logic of the military cases apply solely

to the extent of allowing a certain amount of discretion in the police commissioner to regulate the grooming standards for individual police officers—including the regulation of hair length.

ARGUMENT

I

The grooming of hair is not such a substantial right as to fall within the penumbra of specific guarantees of the Bill of Rights and the constitutionality of the hair regulation should have been accorded the rationality test rather than the heavy burden of showing a compelling State interest.

Circuit Judge Smith, in writing the opinion for the Second Circuit, first states that there is a substantial constitutional issue raised by the regulation of Thomas Dwen's hair length. He then goes further to say the *choice of personal appearance* is an ingredient of an individual's personal liberty. The court further discusses the differentiation between fundamental personal liberties (e.g., freedom of speech, press, etc.) and those liberties it refers to as ". . . less significant personal decisions . . ." (cert. pp. 16a and 17a). The court concludes that even in these areas the interference or limitation on the choice of personal appearance must be justified by a legitimate state interest. The burden of proof then is placed upon the state to show that *its* action is not arbitrary, purposeless and legitimate.

A distinction must necessarily be made between basic fundamental rights as guaranteed by the various amendments and other less important rights. If, the regulation of one's hair length is part and parcel of the choice of

personal appearance —as the Circuit Court indicates—and further, that right is protected by the Fourteenth Amendment, does it not become by virtue of that reasoning a fundamental right? After all, even though the Circuit Court seems to indicate that the choice of one's personal appearance is not as significant as fundamental rights, nevertheless they are stating the Fourteenth Amendment protects the right of appearance. With that reasoning I wholeheartedly disagree and the Circuit Court was in error in coming to such a conclusion.

The choice of one's personal appearance as applies in the instant case is not such a substantial issue as to rise to the protection of *any* of the amendments. The present case involves the regulation of the length of hair of police officers. Undoubtedly, the issue comes up as to whether or not the hair length of any individual may be regulated or is the length of hair protected by the Constitution?

The regulation in question does not prohibit the growth of hair but merely its length. Hair is as fundamental to the human anatomy as almost any part of the body. The regulation does not seek to deprive the individual police officer of his hair by, in effect, plucking it from his body. The regulation merely refers to the grooming of the hair. The regulation as to grooming has no more significant impact on the individual police officer as his being requested to bathe frequently, cut and clean his fingernails, keep his uniform cleaned and pressed, etc.

While the instant case has become somewhat of a leading case concerning police hair length cases, there have been numerous decisions concerning the issue of hair itself and whether it is constitutionally protected, and, if so, by what amendment? The argument has been advanced that the grooming of hair is protected by the First

Amendment and some courts have so held (See *Breen* v. *Kahl*, 419 F. 2d 1034 at 1036 (7th Cir. 1969), cert. denied 398 U.S. 937, 90 S.Ct. 1836, 26 L.Ed. 2d 268, citing *Griswold* v. *Connecticut*, 381 U.S. 479, 85 S.Ct. 1678, 14 L.Ed. 2d 510 (1965), but other courts have held it is not so protected (See *Ferrell* v. *Dallas Independent School District*, 392 F. 2d 697 (5th Cir. 1968), cert. denied 393 U.S. 856, 89 S.Ct. 98, 21 L.Ed. 2d 125; *Karr* v. *Schmidt*, 460 F. 2d 609 (5th Cir. 1972); *Jackson* v. *Dorrier*, 424 F. 2d 213 (6th Cir. 1970), cert. denied, 400 U.S. 850, 91 S.Ct. 55, 27 L.Ed. 2d 88; *Freeman* v. *Flake*, 448 F. 2d 258 (10th Cir. 1971), cert. denied, 405 U.S. 1032, 92 S.Ct. 1292, 31 L.Ed. 2d 489.

The respondent Thomas Dwen, as President of the Suffolk County Patrolmen's Benevolent Association and by himself individually, stated in both his complaint (A. 62), and in his affidavit for an injunction (A. 66) that the police department's grooming regulation with respect to hair violated his rights under the First and Fourteenth Amendments to the Constitution because the ". . . said rules and regulations are not based upon the generally accepted standard of grooming in the community and that it places an undue restriction upon the plaintiff in his activities in the community" (A. 62).

First then, is Thomas Dwen's hair length protected by the First Amendment? From a reading of those cases dealing with First Amendment rights, one must conclude that the answer to this question is in the negative.

The First Amendment to the Constitution of the United States states as follows:

> "Congress shall make no law respecting the establishment of religion, or prohibiting the free exercise thereof; or *abridging the freedom of speech* or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances."
>
> (U.S.C.A. Const. Amend. 1) (emphasis supplied)

A reading of the record in the instant case discloses that there was never an assertion by the plaintiff Thomas Dwen that the wearing of long hair was intended as an expression or point of view which, conceivably, may have brought the issue under the protection of the First Amendment. An oft cited case for the position that length of hair is protected by the freedom of speech provision of the First Amendment is that of *Tinker* v. *Des Moines School Independent Community District*, 393 U.S. 503, 89 S. Ct. 733, 21 L. Ed. 2d 731 (1969). In that case three students were suspended from school because they wore black armbands to show their objection to the Viet Nam War. This court held, in substance, that the wearing of armbands was the expression of an idea or point of view in line with free speech and hence constitutionally protected. The court in that case did state that:

> "The problem posed by the present case does not relate to regulation of the length of skirts or the type of clothing, to *hair style*, or deportment." (emphasis supplied) 393 U.S. 503, at 509, 89 S.Ct. 733, at 737, 21 L. Ed. 2d 731.

The issue in that case is distinguishable from the grooming regulation of the Suffolk County Police Department. The regulation's intent was twofold: for uniformity of morale and for safety. The individuals who wish to wear their hair longer than the regulation are not expressing an idea akin to free speech, as were the three students with armbands. It is merely a difference of opinion on grooming standards between the individual police officer and the management of the police department as represented

by the Police Commissioner. That difference of opinion does not rise to a substantial Federal question any more than the regulation of the color of the uniform, the style of the uniform, the color of socks, etc. Indeed ". . . if we are to have workable rules of constitutional law, the validity of the regulation cannot turn on the plaintiff's subjective motivation in wearing his hair long." *Karr* v. *Schmidt,* 460 F. 2d 609, 614 (5th Cir. 1972). Thomas Dwen's reason for the growth of hair is similar to that advanced by the student in *Karr* v. *Schmidt, supra,* p. 614, in that he simply likes his hair long. The court in that case decided that the wearing of long hair does not, in and of itself, contain such communicative content as to entitle it to First Amendment protection and cites the Supreme Court in the case of *United States* v. *O'Brien,* 391 U.S. 367, 376, 88 S. Ct. 1673, 1678, 20 L. Ed. 672, wherein the court stated:

> "We cannot accept the view that an apparently limitless variety of conduct can be labeled 'speech' whenever the person engaging in the conduct intends thereby to express an idea."

Now, even if the grooming of hair does not fall within the First Amendment, does it fall within any other provision of the Bill of Rights? Several Courts, while holding that the wearing of hair is a substantive constitutional right, are divided on the source of that protection. (*Breen* v. *Kahl,* 419 F. 2d 1034 (7th Cir. 1969), Cert. Denied 398 U.S. 937, 90 S. Ct. 1836, 26 L. Ed. 2d 268, stating the source as either a First Amendment penumbra or an additional fundamental right from the Ninth Amendment or a non-enumerated right as, e.g., the right of privacy available to the States through the Fourteenth Amendment; *Richards* v. *Thurston,* 424 F. 2d 1281 (1st Cir. 1970), the source being the Fourteenth Amendment's liberty clause; *Massie* v. *Henry,* 455 F. 2d 779 (4th Cir. 1972), Fourteenth Amendment due process clause; *Dunham* v. *Pulsifer,* 312 F. Supp.

411 (D.C. Vt. 1970), citing the First and Ninth Amendments; *Bishop* v. *Colaw,* 450 F. 2d 1069 (8th Cir. 1971), source being the Ninth Amendment.) All of these cases involved a student's rights to govern his own hair length and not have to conform to a regulation on the length of his hair promulgated by a school board.

While one may argue that what difference does it make which amendment the right to have hair grow at any length one chooses, it may be indicative of the tenuous nature of the "right". (*King* v. *Saddleback Junior College,* 445 F. 2d 932, 938 (9th Cir. 1971), Cert. Denied 92 S. Ct. 342, 703, 404 S. Ct. 4979, 1042, 30 L. Ed. 2d 294, 736.) A number of courts have ruled that hair length in and of itself is not a substantive Federal right and does not fall within the penumbras of the Bill of Rights (*King* v. *Saddleback Junior College, supra; Ferrell* v. *Dallas Independent School District* (5th Cir.), 392 F. 2d 697, Cert. Den. 393 U.S. 856, 89 S. Ct. 98, 21 L. Ed. 2d 125; *Jackson* v. *Dorrier* (6th Cir.), 424 F. 2d 213, Cert. Denied 400 U.S. 850, 91 S. Ct. 55, 27 L. Ed. 2d 88; *Freeman* v. *Flake* (10th Cir. 1971), 448 F. 2d 258, Cert. Denied 405 U.S. 1032, 92 S. Ct. 1292, 31 L. Ed. 2d 489). While no specific section of the Fourteenth Amendment is mentioned by the plaintiff Thomas Dwen, it can be gleaned from the facts of the instant case that the claim of violation of the Fourteenth Amendment stems from the language which states that:

> ". . . nor shall any state deprive any person of life, liberty, or property, without due process of law . . ."

As the Second Circuit opinion reads, there was a violation of this section because it found that personal appearance was an *ingredient* of personal liberty and the State (the police commissioner) was in effect depriving the plaintiff of his liberty arbitararily (cert. p. 17a). It is significant that the court stated that the choice of personal appearance was an ingredient of personal liberty and did not say that

personal appearance *is* a liberty. As Circuit Judge Morgan wrote in the majority opinion in *Karr* v. *Schmidt, supra,* p. 615,

> "We think it plain that individual liberties may be ranked in a spectrum of importance. At one end of the spectrum are the great liberties such as speech, religion and association specifically guaranteed by the Bill of Rights. Of equal importance are liberties such as the right of marital privacy that are so fundamental that, even in the absence of a positive command from the Constitution, they may be restricted only for compelling state interests. At the other end of the spectrum are the lesser liberties that may be invaded by the state subject only to the same minimum test of rationality that applies to all state action."

Since the Circuit Court did not conclude that the choice of personal appearance was in and of itself a fundamental liberty, but was merely an ingredient, if anything, the "right" would be on the lower end of the spectrum and not be classified a fundamental liberty. In that case, the State should not have had the burden of proof placed upon it to show a compelling state interest. The regulation should not have been *presumed* unconstitutional. The burden should have remained with the plaintiff to *prove* arbitrariness and not for the defendant to show it was not arbitrary. The Circuit Court was intervening in an area where it should have abstained, i.e., the running of a police department, because absent a fundamental right, the better course would have been to restrain from interference.

Indeed, an identical hair regulation of the sister county of the County of Suffolk, Nassau County, was proceeding through the State courts and by the time the Second Circuit was ready to rule on the matter, the State's highest court had affirmed an Appellate Division ruling which upheld the regulation as being modest and not rising to the dignity of a constitutional issue. (See *Greenwald* v. *Frank, supra.*)

The Second Circuit's opinion as to the burden of proof was erroneous.

> "State regulations which do not affect fundamental freedoms are subject to a much less rigorous standard of judicial review than is applicable when fundamental rights are at stake. In such cases, the appropriate standard of review is simply one of whether the regulation reasonably intended to accomplish a constitutionally permissible state objective." (*Karr* v. *Schmidt, supra,* p. 616) (See e.g. *Williamson* v. *Lee Optical of Oklahoma, Inc.,* 348 U.S. 483, 491, 75 S.Ct. 461, 99 L.Ed. 563, 574, *Ferguson* v. *Skrupa,* 372 U.S. 726, 83 S.Ct. 1028, 10 L.Ed. 2d 93 (1963).

If there is no place in the Bill of Rights to insert the so-called right to have one's hair any length, then obviously it is not a constitutional protected right. At issue here is not the right to grow but rather the State's right to regulate the grooming of hair of individual police officers. Similarly in the school cases, it was argued that school authorities had the right to regulate grooming of hair. The most one could argue is that the right would be similar to the right of marital privacy which while not enumerated in the Bill of Rights is a right older than the Bill of Rights (See *Griswold* v. *Connecticut,* 381 U.S. 479, 486). If that be so, then choice of personal appearance would be the "right" and not the length of hair. A police officer could not be required to wear a blue uniform because it would initially violate a substantial constitutional right. What is the rationale for the uniform but appearance? We are not dealing with a regulation which the government has chosen to compel all citizens to comply with, i.e., for each and every citizen to get his hair cut. We are specifically dealing with a police department and the power of the commissioner of that police department over the personal attitudes of his men.

If the choice of personal appearance is a constitutionally protected right then the "right would have to include the police uniform and all its attributes." To say that the choice of personal appearance only relates to the length of hair would be absurd. To sustain the choice of personal appearance as a fundamental constitutional right of the police officer would advance all types of spurious litigation as evidenced by a suit recently brought in the State Courts in New York State as to the wearing of nameplates by police officers while on duty. The claim was made that the wearing of the nameplate violated the individual officer's right of privacy. The court in that case correctly held that no right of privacy was violated as there was no right because—

> "Exposure of the self to others in varying degrees is concomitant of life in a civilized community" (*Time* v. *Hill,* 385 U.S. 374, 388). As stated by the court in *Rosenberg* v. *Martin,* 478 F. 2d 520, 524-525 (2d Cir. 1972), cert. den. 414 U.S 872—"Thus far only the most intimate phases of personal life have been held to be protected under the Constitutional right to privacy."
>
> *Cooke* v. *Police Dept. City of New York,* 45 A.D. 2d 486, 488; 359 N.Y.S. 2d 672 (1975).

The point is that the grooming of hair is no different from being required to wear a certain color uniform or a nameplate if required, or a specified hat. The grooming of hair is no more a substantial issue than it would be for this court to rule that the choice of clothing is such a personal substantial right that it is protected under the Bill of Rights and to overcome or infringe on the individual the Police Commissioner would have the heavy burden of showing public need. If that be the case, the uniformed police force as presently exists would be virtually destroyed because of the subjective personal appear-

ance whims of a few. The obvious disastrous effect of such a situation cannot be ignored and must be deemed a sufficient state interest to outweigh an individual's personal preference when he is employed as a police officer.

In evaluating the Circuit Court of Appeals cases dealing with hair, one cannot equate the school cases to a case involving police officers. The Eighth Circuit for instance, in *Bishop* v. *Colau,* 450 F. 2d 1069 (8th Cir. 1971), upheld the right of student to wear his hair to school any way he chose. The same court in *Stradley* v. *Anderson,* 478 F. 2d 188, has decided in weighing the competing interests of the individual police officer and the interests of an effective police force that there is a legitimate state interest in allowing police departments to have such regulations. "Unlike the school cases, those officials who have spent their lives in police work, who are trained in law enforcement discipline, possess far better empirical judgment of what is essential to achieve an efficient and disciplined police force than the officers themselves, the public or the predeliction of individual judges" (cert. p. 28a).

In the instant case, the first paragraph of the regulation states that each officer should be neat and clean (A. 57). If one carries the fundamental liberty argument to its extreme, the police commissioner would not be allowed to enforce basic cleanliness grooming without proving a legitimate State interest each and every time. Under the reasoning of *Stradley* v. *Anderson, supra,* such problems are avoided because even if one interprets the choice of grooming as a personal right, the degree of appearance ". . . as long as it is not arbitrary or unreasonable, should not be the court's concern . . ." (*Stradley* v. *Anderson,* cert. 28a).

II

Assuming *arguendo* that an individual police officer's hair grooming is a personal right protected under the Constitution, the petitioner's interest in effective law enforcement outweighs the individual's rights because uniformity of grooming as part of uniform regulations and safety are equally legitimate State interests.

The Circuit Court of Appeals for the Second Circuit has stated that the choice of personal appearance is an ingredient of an individual's personal liberty (cert. 17a). In discussing this right, the Court referred to a number of cases discussing which Amendment of the Constitution the right emanates from. The Court concluded that in their opinion the right was based on the guarantee of the Fourteenth Amendment ". . . of personal liberty of a rational continuum which, broadly speaking, includes a freedom from all substantial, arbitrary impositions and purposeless restraints . . . *Poe* v. *Ullman*, 367 U.S. 497, 543 (1961) (Harlan, J. Dissenting) . . ." (cert. 17a). Assuming arguendo, the Second Circuit was correct, then their further reasoning would follow also that to restrict an individual's right the State (in this case the Police Commissioner) should justify a hair regulation by a " . . . legitimate State interest reasonably related to the regulation" (cert. 17a).

The Police Commissioner has advanced two arguments as to what is the legitimate State interest. First, the argument is made that uniformity in grooming as part of uniform regulations by members of the Suffolk County Police Department *is* a legitimate State interest. The police officer is required to wear a uniform and the color, style and material is governed by the Police Department since the individual is *given* the uniform to wear and is *required* to wear the uniform (A. 18). Part of that uniform is a hat, which must also be worn (A. 19).

Appearance of a police officer is essential to proper law enforcement since the uniformed police officer is the very symbol of our laws and the visible sign of law enforcement. The impression the individual officer gives the public is extremely important to the effectiveness of any police force. Now if one isolates grooming of hair from the uniform, then an individual officer would apparently, under the reasoning of the Second Circuit Court, be able to constitutionally personally groom himself in any manner he sees fit. If the officer does not maintain his uniform, i.e., does not have it cleaned and pressed occasionally or comes to work with a two or three-day beard growth or does not bathe frequently, this too would have to be constitutionally protected—unless the interest of the State outweighs that individual officer's right to personally groom himself. The regulation in question speaks not only of hair but also that members of the force be neat and clean (A. 57).

The legitimate State interest that there must be uniformity of grooming goes to the essence of police work. A police department is judged as a whole by the public upon the individual police officer's personal experiences with the public. To that end, regulations governing the officer's conduct with reference to personal appearance, attitudes and conduct must be formulated by each police department. Appearance of the individual officer is essential to the image of the entire police department. It has a bearing on the morale of the individual officer, on the espirit of the police force, and on the individual citizen's reactions. Personal cleanliness are part and parcel of the uniform concept, and it is ordinary and usual for police departments to have regulations that officers shave daily, bathe frequently, clean and trim their fingernails, shine their shoes, take care of their clothes and have their hair trimmed, cut or groomed periodically. (See Police Administration, O. W. Wilson, 2d Edition pp. 186-187.)

> "The patrol officer in any city is the most visible representative of government. Usually in a motor vehicle,

sometimes on foot, he patrols a specific area, responds to calls for service, and maintains order in the community. Unlike a specialist or a technician, a patrol officer must be proficient at a variety of tasks rather than skilled in a limited field. Although he is not a supervisor in the organizational sense, he is responsible for the safety and direction of hundreds of people each day." (Report on Police, National Advisory Commission on Criminal Justice Standards and Goals, 1973, p. 192.)

The grooming of the individual police officer whether it be the cleaning and pressing of the uniform, the cleaning of his fingernails *or* the cutting of his hair is part of the concept of projecting to the public a *uniform* police officer as the representative of government.

> "Every citizen has the right and the need to be able to recognize a uniformed police officer on sight. Moreover, the necessary police prerogative of temporarily restricting the freedom of individuals under certain conditions demands that citizens in such situations be informed as to the identity of the officer and the police agency he represents. The police uniform affords the easiest and most direct means of satisfying all these identification requirements." (Report on Police, *supra*, p. 517.)

And further that

> "Uniform regulations should be enforced within an agency by a continuing program of inspection and control to insure compliance by all officers. This can be accomplished by supervisors conducting daily uniform inspections of the officers of each watch or shift. Many agencies do this during watch briefing or rollcall. Supervisors, when they notice deficiencies in the appearance of a subordinate, should routinely inform the officer that his uniform is unauthorized, in need of repair, or otherwise unpresentable. It should be emphasized to all officers that their appearance says much about themselves, their agency, and their regard for the public trust they hold." (Report on Police, *supra*, p. 518.)

This reasoning, of course, was stressed by the Federal District Court in *Stradley* v. *Anderson* (cert. 23a), as the reason for outweighing the individual police officer's personal rights. District Judge Denney states that, "Grooming standards, as part of uniform regulations, are a legitimate State interest" (cert. 34a). The decision was appealed and the Eighth Circuit affirmed the decision (cert. 29a).

A second legitimate State interest advanced by the Suffolk County Police Department was safety. A demonstration was given at a hearing before District Court Judge Mishler that an officer could be pulled off his feet easily in an assault situation (A. 15-16), whether it be because of a beard (A. 17) or the length of hair on his head interfering with the operation of a police vehicle during a pursuit chase (A. 19) and that it further interfered with the head gear (A. 19) which is part of the uniform. As a finding of fact, Judge Mishler did find that the wearing of pony tails would be dangerous (cert. 7a) and it is to be noted that *no witness* testified to the *contrary* as to any of these facts. The Court took it upon itself to substitute its judgment for the police department as to whether or not the length of hair of an individual police officer could indeed be a safety factor. Once safety was asserted as a legitimate State interest and testimony was heard to substantiate that interest, the Suffolk County Police Department had sustained their burden of showing a legitimate State interest and the burden was upon the plaintiffs to come forward with evidence contrary to the arguments advanced by the Suffolk County Police Department. No such testimony was elicited nor did the plaintiffs proffer any testimony at all. The Court was clearly in

error, then, in subsequently declaring the regulation unconstitutional. The Circuit Court was equally in error in affirming the decision of Justice Mishler.

With respect to the issue of safety, the same Circuit Court of Appeals has deemed a regulation dealing with firemen to be constitutionally permissible where safety was advanced as the "legitimate State interest". (*Kamerling et al.* v. *O'Hagen*, 512 F. 2d 443 (2d Cir. 1975).) If one examines the preface to the hair regulation in that case, it speaks of safety of the firemen. The present hair regulation of the Suffolk County Police Department makes no such statement, but testimony at the hearing advances the same purpose. Would the regulation of the Suffolk County Police Department have been upheld by the Second Circuit if it had such a preface? It would seem so based on the reasoning of *Kamerling, supra.* It is then absurd for the same court to issue two different rulings on what is essentially the same argument. A uniformed police officer is no less a civil servant than the *uniformed* fire fighter. Indeed, the police officer is the visible sign of law enforcement where the fireman's duties are confined to fight fires—an essential and worthy occupation—but *not* as representative of the law as the policeman!

In *Kamerling, supra,* the Court stated that there was unquestioned interest of the City of New York in the health and safety of its fire fighters, and therefore a hair regulation was proper. Was there any less concern by the Suffolk County Police Department for its individual officers? I think not—and again, there was no rebuttal testimony to show that safety was *not* a reason for having a hair regulation by the Suffolk County Police Department.

III

Since the State Courts had considered a virtually identical grooming regulation and sustained its validity, the Federal District Court and the Court of Appeals should have refrained from ruling on the identical issues.

The "Pullman Abstention" policy wherein the Federal Courts will abstain from interfering with certain areas being developed in the State Courts came about as a result of *Railroad Comm'n.* v. *Pullman Co.,* 312 U.S. 496 (1941). The Supreme Court of the United States held, in substance, that if a claim in the Federal Courts is based upon an unsettled question of State law, the Federal Court should allow the State Court to resolve the issues. The Supreme Court has expanded the policy in the case of *Younger* v. *Harris,* 401 U.S. 37 (1971), wherein the Court stated that if injunctive relief is sought in the Federal Courts against pending State criminal proceedings, the Federal Courts should deny such relief not on the merits but simply to allow the State Courts to function on their own without unnecessary Federal Court interference.

More recently the policy of abstention was expanded to encompass State proceedings even where the case is civil in nature. The case of *Lawrence S. Huffman* v. *Pursue, Ltd.,* —— U.S. ——, 43 L. Ed. 2d 482, 95 S. Ct. 1200 (1975), involved an Ohio public nuisance statute which stated that exhibition of certain obscene films could subject an owner of the premises it was being shown at to having his establishment closed up for a year. Pursuant to that statute, the State of Ohio commenced a civil proceeding in the State courts and obtained a judgment against the owner and he was ordered to close his premises for one year. Instead of pursuing the appeal process in the State courts, the owner sought and obtained Federal injunctive relief under 42 U.S.C. Sec. 1983. The Federal District Court

went even further and declared the statute unconstitutional. On review before the Supreme Court of the United States, the Court reversed the District Court decision and remanded it to that Court to look at the case again—but this time to follow the principles of *Younger* v. *Harris,* 401 U.S. 37 (1971). (See also, *Harris County Commissioner's Court* v. *Moore,* —— U.S. ——, 43 L. Ed. 2d 32, 95 S. Ct. 870 (1975).)

Now one may well argue that neither the petitioner nor the respondent in the instant case ever resorted to the State courts and therefore the Pullman Abstention Doctrine has no application. It does have application if, as the Suffolk County Police Department contends, its sister county had been subjected to State proceedings. (*Greenwald* v. *Frank,* 70 Misc. 2d 632, 334 N.Y.S. 2d 680, affd. 40 A.D. 2d 717, 337 N.Y.S. 2d 225, affd. 32 N.Y. 2d 862, 346 N.Y.S. 2d 529 (1973).) The grooming regulation was virtually identical. A reading of all the opinions in the *Greenwald* case, *supra,* can leave no doubt that the constitutional issues were resolved in that case and the State's highest court affirmed the lower courts. That affirmance was on May 30, 1974. The Court of Appeals for the Second Circuit was well aware of the opinion and even referred to it in its decision (Cert. 15a).

Since the underlying issues in *Greenwald* were identical to the instant case and the issues had been resolved in the State courts, the Second Circuit should have affirmed the dismissal of the complaint or dismissed it of its own accord for failure to state a claim upon which any relief could be granted. The underlying principle of the "Pullman Abstention" doctrine is, of course, the concept of comity, i.e., a proper respect for State functions. (*Younger* v. *Harris,* 401 U.S. at 43.) The constitutional questions were considered in *Greenwald, supra,* and while not using that language, it is clear that the State courts did not feel the grooming of hair was a substantial constitutional right

and properly disposed of the issues. Moreover, they found that since a police department is quasi-military in nature and the regulation on its face was not unreasonable, it was allowed to stand.

IV

Since the Suffolk County Police Department is quasi-military in character, the reasoning applied in the military cases have more application than that of the school cases.

The Second Circuit concluded in its initial opinion that the Suffolk County Police Department was not para-military or quasi-military. Interestingly enough, in discussing the history of civilian police departments, the Court cites Taft & England's "Criminology, 4th Ed." as an authority for its conclusion. The Court, however, missed the language used by the very same authors in describing police department structure when they state that:

> "To perform its basic repressive function effectively, a police force requires a semi-military type of organization permitting the commissioner or chief to control and be responsible for the entire program." (*Supra,* p. 326.)

Even in Lee's "A History of Police In England" (1971) which the Second Circuit also relied on does not support their view that the police are not quasi-military as the author speaks of police discipline as encompassing obedience and respect for lawful authority (Lee, A History of Police In England, 1971, p. 402).

There is, of course, no precedent by this Court or indeed other courts except for *Stradley* v. *Anderson, supra,* upon which the Suffolk County Police Department relies to ad-

vance the argument that police are different from school children. The closest analogy would be the reasoning in the military cases.

The Second Circuit in 1970, in *Gianatasio* v. *Whyte,* 426 F. 2d 908 (2d Circ. 1970), Cert. Den. 400 U.S. 941, 91 S. Ct. 234, 27 L. Ed. 2d 244, held in effect that the military had wide discretion in regulating hair length of its members. The argument asserted by Gianatasio was that since he was a National Guard member and only periodically came to meetings and the rest of the time he worked as a manager of a Shoe Bazaar, that longer hair was essential to his work. The Court, citing its previous decision of *Raderman* v. *Kaine,* 411 F.2d 1102 (2d Cir. 1969), decided in favor of the military. (To the same effect, *Anderson* v. *Laird* (7th Circ. 1971), 437 F.2d 912, Cert. Den. 404 U.S. 865, 92 S. Ct. 68, 30 L. Ed. 2d 109; *Doyle* v. *Koelbl,* 434 F. 2d 1014 (5th Circ. 1970).)

The inconsistency in reasoning between the various courts regarding hair length is readily seen by the Seventh Circuit decision. In *Breen* v. *Kahl, supra,* a case involving school children and the right of a school board to regulate hair of students, the choice of one's hair length is equated to a fundamental personal right protected by either the First, Ninth or Fourteenth Amendment. The case was decided in 1969. Two years later the same Circuit when confronted with the military's right to regulate hair finds no justification to warrant that court's interference with the discretionary decision of the military (*Anderson* v. *Laird, supra*). It is even more apparent that the Second Circuit in *Gianatasio* v. *Whyte, supra,* and *Raderman* v. *Kaine, supra,* takes a similar position that the military may regulate hair lengths and implies there is no substantial consitutional right to personal appearance simply because one is in the military.

Since the police function on a semi or quasi-military basis, the same reasoning in the military cases should apply

that the Police Commissioner should have the wide range of latitude in grooming standards. In the military, the individual is subjected to rigid discipline as to the hours of employment, the clothes he wears, the grooming of both the clothes and himself, and even so far as his personal time off from his duties. A police officer is assigned a rotating tour of duty, generally of eight hours a day, and shifts change weekly. He is required to wear a blue uniform, black socks, tie, black shoes and a hat. He has to report for duty and is, of course, paid for his job. He has been, prior to this case, subject to grooming standards. The Police Commissioner, in his discretion, has deemed certain grooming of the police officer essential or at least part of the uniform.

Does not the individual officer have under the Fourteenth Amendment the right to choose the color of his clothes? Why must he wear a uniform? Why, indeed, cannot he ever wear a uniform but individualize it so that his personal liberty is not overshadowed by his employer?

The military has deemed good grooming to be one of the essential ingredients to an effective military and yet, no one would really argue as to whether or not the soldier in the field is more effective clean shaven than he is with a five-day growth. So, too, the Suffolk County Police Department deems good grooming essential to the effecetiveness of the Department's visibility to the criminal and the public. It is important to note that both the military and the police do not attempt to abolish the growth of hair from the human body since it would be readily apparent that that growth is so intermingled with bodily functions as to possibly be protected under the Constitution—whatever Amendment. It is not the growth but the *grooming of the growth* that the Suffolk County Police Department sought to regulate.

When Thomas Dwen chose to become a Suffolk County Police Officer he was required to take and pass a civil

service examination consisting of a written test along with a medical test and also a testing for physical agility. Upon being accepted into the Suffolk County Police Department, he had to undergo training at the Police Academy, which is not dissimilar to boot camp in the military. If Mr. Dwen had previously been unaware of the duties of police officers (which is unlikely since, again, the police officer is *the* most visible sign of law enforcement known to the public), he certainly became aware of them during that training. He voluntarily took a civil service test. He voluntarily passed all physical and medical standards. He voluntarily went through a Police Academy under rigorous training. He voluntarily subjected himself not only to performing a job but to all of the rules and regulations of the Suffolk County Police Department as promulgated by the Police Commissioner. Now, even accepting the premise that the grooming of hair *is* a personal right protected by the Constitution, can one say that Mr. Dwen has not knowingly and intelligently waived that right once he became a police officer?

He certainly waived his right to wearing any type of clothing he chooses to wear on the job as well as the hours he wishes to work or the assignments he chooses to accept. Each individual, no matter what type of employment, subjects himself to some infringement upon what he may regard as personal rights. The requirment, for instance, to wear uniforms is a requirement not only of police but generally of firemen, postal workers, parcel post workers, forest rangers, Parks Department employees, Court officers, etc. Indeed, for the bald-headed person, the only true expression of individuality may be in his style of dress of clothes, because he is unable to grow long hair—and yet he, too, if he is employed in one of the above positions, must accept the infringement on his "personal rights" so that he will have a paycheck to pursue those "rights" on his own leisure time.

The argument may, of course, well be advanced that at least with respect to clothes, the individual may shun the uniform at five o'clock and wear whatever he chooses where the same is untrue with hair—he cannot grow and ungrow it. The interference, however, with his personal appearance is minimal at best. He may wear his hair in any style he chooses after he is off duty. In any event, the length of hair as governed by the regulation is always subject to a Court test of arbitrariness so that a regulation requiring the men be shaved bald may be reviewed by the Courts as to its reasonableness. (See dissent of Justice Shapiro in *Greenwald* v. *Frank, supra,* 337 N.Y.S. 2d 225, 231.)

Further, the very same PBA that initiated the present suit has recently characterized itself as quasi-military as the statement by its present president stated in an affidavit submitted in a case challenging certain physical standards for police officers wherein he states at paragraph 11 of his petition:

> "11. That it is a well accepted premise that a police department is a quasi-military organization entrusted with the responsibility of enforcing the laws of its jurisdiction and protecting the rights and property of all citizens."
>
> (*Johnson, Individually and as President of the Suffolk County Patrolman's Benevolent Association, Inc.* v. *Klein, et al.*, Supreme Court, Suffolk County, Index No. 75-2487, Decided, May 28, 1975). (Unreported)

The grooming standard set forth in 2.16 of the Rules and Procedures of the Suffolk County Police Department is one of many rules which limit the individual officer's "personal rights". A member of the force must be available for duty and must leave a number where he can be

contacted by his commanding officer (E. 38). He must have respect for superior officers and others and give his rank, name, shield number and command to anyone requesting same (E. 38) and must maintain decorum when appearing in a Court by wearing his uniform (E. 39).

He is required to pay his debts promptly (E. 42); forbidden to have personal business cards which would show his association with the Department (E. 42); cannot join a Federal or State military organization without permission of the Commissioner of Police (E. 44); and when required to march, must do so in accordance with United States Infantry Drill Regulations (E. 43).

The individual officer is further required not to smoke in public unless in a restaurant or a Department vehicle (E. 55) and does not indulge in intoxicants while in uniform (E. 55). He is further required to wear a prescribed uniform and it must be maintained in a neat, clean and serviceable condition (E. 77). A specific section requires even the color of socks to be black (E. 77). Summer and winter uniforms are prescribed (E. 78) including the wearing of gloves (E. 79-80). A department insignia must be worn on the uniform at a prescribed place (E. 80).

A vast organizational structure is specifically detailed in the Rules and Procedures of the Suffolk County Police Department similar to the military (E. 5-37). The designation of the individuals to tasks under the same ranks as in the military are evidence of the similarity to military structure (e.g., captain, lieutenant, sergeant—E. 81). The duties of each individual's assignments are specifically stated in military fashion (Patrolman, E. 122; Desk Officer, E. 138; Supervising Officer, E. 144; Commanding Officer, E. 149; Executive Officer, E. 160). The individual officer is required to salute the national colors (E. 111) and even upon his decease is entitled to a color guard, honor guard and pallbearers (E. 113). Depending upon

his rank at the time of decease, he may be entitled to have anywhere from 1 sergeant and 12 police officers to 1 inspector, 2 captains, 4 lieutenants, 8 sergeants and 72 police officers present at his funeral. Dying in the line of duty would automatically entitle him to the latter (E. 115).

The police officer cannot leave his post during his tour of duty except with permission of a superior officer (E. 133); must maintain a memorandum book of all activities while on duty (E. 135); and is entitled to various medals for honor and bravery (E. 117).

As further evidence of the semi-military structure of the organization, each police officer must carry his shield at *all* times (E. 86) ***and*** an authorized identification card (E. 91). He may not even on his own personal time (i.e., after his tour of duty) associate with persons known to have been convicted of *any* misdemeanor or felony, excluding traffic violations (E. 56).

Reference is further made in the Rules (E. 46-47) to Section 426 of the Election Law of the State of New York, which in substance makes it a misdemeanor for a police officer to contribute money to a political party or become a member of any political club, association, society or committee.

Now, with reference to all of the above rules and procedures, the individual officer under Rule 5.8 is required to study the rules and procedures and is to be bound by them (E. 56). Violation of the rules will subject him to disciplinary proceedings which could result in a reprimand, fine, suspension or even dismissal (E. 93-108).

The excerpts from the Rules and Procedures of the Suffolk County Police Department are evidence of a semi-military structure. The grooming standard is just one of a number of requirements that may infringe on an individual's subjective choices, whether it be the type of

clothing, his smoking habits, his friends or membership in political clubs. It cannot be set apart from the entire rules and regulations since the purpose of the rules is that they operate to have a single uniformed body of men governed by uniform rules of conduct. To selectively separate one of those rules of conduct and state that the individual police officer's personal choice of grooming is a substantial constitutional right undermines the entire structure and procedures of the Suffolk County Police Department.

If it is a substantive constitutional right for the officer to determine the length of his hair, then it is equally a substantive constitutional right that he be allowed to smoke when and where he wishes, that his membership in a political party cannot be forbidden, that he not be obliged to wear certain color uniform, that he maintain that uniform in a neat condition or that he be required to be neat and clean at all times, salute his fellow officers, etc.

The Rules and Regulations of the Suffolk County Police Department are fashioned after military rules because the organization is run in a semi-military fashion. There is no compulsion that an individual become a member of the Suffolk County Police Department. He voluntarily applies for the position and goes through the usual civil service testing procedure. Once a police officer, he must comply with the rules and procedures. Failure to comply results in disciplinary procedures similar to the military. The grooming standard is part and parcel of the entire rules and to set it apart from the rest of the rules as a substantive constitutional right is an unwarranted interference by the Federal Courts in the orderly administration of the Suffolk County Police Department.

The Federal District Court for the Eastern District of New York erred in declaring the grooming standard regulation of the Suffolk County Police Department unconstitutional and the Second Circuit Court of Appeals was

equally in error in affirming the District Court's decision. If the choice of personal appearance—including hair length—is a fundamental right the Commissioner of Police of the Suffolk County Police Department sustained his burden of proof by advancing two legitimate State interests and the complaint should have been dismissed. The complaint further should have been dismissed on the basis that since the Suffolk County, Police Department is quasi-military in character, the reasoning of the military cases should have been ample reason for the Court to dismiss the complaint.

Further, the "right" of choice of personal appearance is not such a fundamental "right" as to be afforded constitutional protection and the complaint should have been dismissed on that basis. If any reasonable interpretation can be given to the restriction of hair length it would be that it is a lesser "right" and in that case the District Court for the Eastern District of New York and the Second Circuit Court of Appeals erred in placing the heavy burden of proof on the Police Commissioner and should have merely applied the rational relationship test.

Lastly, since New York State's highest court had already ruled on the constitutionality of the regulation, the Federal Court should have abstained from interfering with a problem already resolved in the State Courts.

CONCLUSION

For the foregoing reasons, the judgment below should be reversed and the complaint dismissed.

Dated: July 11, 1975.

Respectfully submitted,

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Supreme Court, U. S.
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IN THE

Supreme Court of the United States

OCTOBER TERM, 1974

No. 74-1269

JOHN L. BARRY, Commissioner of the Suffolk County Police Department,

Petitioner,

against

THOMAS DWEN, as President of the Suffolk County Patrolmen's Benevolent Association and THOMAS DWEN, Individually,

Respondent.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

RESPONDENT'S BRIEF

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In the

Supreme Court of the United States

OCTOBER TERM, 1974

No. 74-1269

John L. Barry, Commissioner of the Suffolk County Police Department,

Petitioner,

against

Thomas Dwen, as President of the Suffolk County Patrolmen's Benevolent Association and Thomas Dwen, Individually,

Respondent.

On writ of certiorari to the United States Court of Appeals for the Second Circuit

---

RESPONDENT'S BRIEF

Questions Presented

Does a police department constitute a para-military organization, thereby entitling its head greater discretion than is permitted to the heads of other departments of public employees?

Does an individual's grooming fall within the protection of the constitution thereby requiring the state to justify any attempt to regulate it?

Summary of Argument

Neither the historical nor the legal development of the military and police institutions in our society provides support for the conclusion that police organizations are para-military in character.

Due to the unique position of the military in the constitution as well as the nature of the military, the courts have been extremely reluctant to interfere in military matters.

The police hold no such favored position in the law, and the courts do not hesitate to interfere with police matters.

A review of not only the judicial but legislative history of police in this country establishes that a police organization is part of the civil service system, entitling its members to all of the rights and benefits afforded other civil servants.

Since the choice of personal appearance is part of an individual's personal liberty, any attempt to regulate it must be justified by establishing a sufficient state interest.

The petitioner who had the burden to establish the necessary state interest failed to do so.

ARGUMENT

I

A police organization constitutes a specific department of a municipal or state government, and its members are entitled to the same constitutional protection afforded other civil servant employees of such governmental units.

Although police organizations have been characterized through the years as being either para, semi or quasi-military by the courts, *People* ex rel. *Masterson* v. *French*,

110 N.Y. 494 (1888); *Fraternal Order of Police* v. *Harris*, 306 Mich. 68, 10 N.W.2d 310 (1943); *Doyle* v. *Kammeraad*, 310 Mich. 233, 17 N.W.2d 165 (1945); *Greenwald* v. *Frank*, 70 Misc. 2d 632, 334 N.Y.S.2d 680, affd. 40 A.D. 2d 717, 337 N.Y.S.2d 225, affd. 32 N.Y. 2d 862, 346 N.Y.S.2d 529 (1973); *Stradley* v. *Andersen*, 478 F. 2d 188 (8th Cir., 1973), with the resulting limitation upon the constitutional rights of the members of such organizations, *McAuliffe* v. *City of New Bedford*, 155 Mass. 216, 29 N.E. 517, the historical and legal development of both military and police organizations do not provide support for such a characterization.

The military and police traditions of the United States can be traced as far back in English history as the Assize of Arms 1181 A.D. and Statute of Winchester 1285 A.D.[1]

During this early period the two systems were closely allied,[2] but as time passed each system with the aid of subsequent statutes[3] began to develop its own function in society. The military evolved into a professional organization concerned with the defense of the nation,[4] while the police retained its local character and concern for local matters.[5]

The distinction between the functions of the military and police were retained by the colonists when they arrived in the New World. While they did not create a profes-

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[1] Weigley, History of the United States Army, 3 (1967); W. Lee, *A History of Police in England*, 26 (1901, 1971).

[2] W. Lee, *supra* at 7.

[3] Weigley, *supra* at 3; T. A. Critchley, *A History of Police in England and Wales*, 7 (2d 1972).

[4] Weigley, *supra* at 3-4.

[5] See, W. Lee generally; T. A. Critchley, *supra* ch. 1; Taft and England, Criminology, 318-320 (4 ed. 1964).

sional army, relying upon the militia[6] until the birth of the American Army in June or July of 1775,[7] they were as adamant as the English in long delaying the establishment of a regular police, the first being created in New York in 1844.[8] Just as the historical development of the military is distinct from that of the police, so too is its legal development distinct.

The legal foundation of the military is based upon the United States Constitution. In Article 1 § 8, cl. 11 Congress is granted the power "To raise and support Armies . . .", cl. 13 grants to Congress the power "To make rules for the government and Regulation of the land and naval Forces . . .", and Article 2 § 2 states "The President shall be Commander in Chief of the Army and Navy . . ." There is no reference in the United States Constitution to the establishment of a police force, nor is there such a reference in the New York State Constitution. The legal foundation for the numerous police organizations in New York State is found in either the local laws,[9] or general statutes.[10] This foundation retains the distinction that the military being concerned with the national security is a unified body under the control of one individual, whereas the police organizations are numerous, locally established and controlled, and concerned with local affairs.[11]

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[6] Weigley, *supra* at 4, 8.

[7] Weigley, *id.* at 26.

[8] Taft and England, *supra* at 320.

[9] Suffolk County Charter, Article 12.

[10] N.Y. Executive Law, Article 11; N.Y. Unconsol. Laws, § 5721; N.Y. Village Law, Article 8.

[11] *Ibid.*

Due to the unique position of the military in the Constitution as well as the nature of the military, the Courts have afforded to the military a distinct position in our jurisprudence.

> "Judicial hesitancy when faced with matters touching on military affairs is hardly surprising in view of the doctrine of separation of powers and the responsibility for national defense which the Constitution, Art. 1, § 8, cl. 1 and Art. II, § 2, places upon the Congress and the President." *Hammond* v. *Lenfest,* 398 F. 2d 705, 710 (2d Cir., 1968).

From this deference developed the principle that ". . . Army Regulations, when sanctioned by the President, have the force of law . . ." *U.S.* v. *Freeman,* 44 U.S. 556, 566-567, 3 How. 556, 566-567, 11 L. Ed. 724 (1845); accord, *Billings* v. *Truesdell,* 321 U.S. 542, 551, 64 S. Ct. 737, 88 L. Ed. 917 (1943); *Standard Oil Co. of California* v. *Johnson,* 316 U.S. 481, 484, 62 S. Ct. 1168, 86 L. Ed. 1611 (1942). The rationale for this principle was set forth in *United States* v. *Eliason,* 41 U.S. 291, 301, 16 Pet. 291, 301, 10 L. Ed. 968 (1842):

> "Such regulations cannot be questioned or defined, because they may be thought unwise or mistaken. The right of so considering and treating the authority of the executive, vested as it is with the command of the military and naval forces, could not be intrusted to officers of any grade inferior to the commander-in-chief; its consequences, if tolerated, would be a complete disorganization of both the army and navy."

The courts further developed this special jurisprudence by refusing to entertain jurisdiction to review military matters.

> "The decision, therefore, of a military tribunal acting within the scope of its lawful powers cannot be reviewed or set aside by the courts." *Reaves* v. *Ains-*

worth, 219 U.S. 296, 304, 31 S. Ct. 230, 55 L. Ed. 225 (1911).

In *Orloff* v. *Willoughby,* 345 U.S. 83, 94, 73 S.Ct. 534, 97 L. Ed. 2d 842 (1953), the Court explained the reasoning behind this principle:

> "The military constitutes a specialized community governed by a separate discipline from that of the civilian. Orderly government requires that the judiciary be as scrupulous not to interfere with legitimate Army matters as the Army must be scrupulous not to intervene in judicial matters."

The police do not hold the same distinct and deferential position in our jurisprudence as the military. Specifically, the acts or actions of the petitioner herein are subject to the same review as the head of any other municipal or civil service department. N.Y. Civil Practice Law and Rules, Article 78; see, *Walker* v. *Murphy,* 15 N.Y.2d 650, 651, 255 N.Y.S. 2d 869, 870 (1964). Although several early New York cases, *People ex rel. Hart* v. *Bd. of Fire Comms.,* 82 N.Y. 358, 360-361 (1880); *People ex rel. Masterson* v. *French, supra,* at 497-498, held review of a commissioner's action was limited, these cases were decided both before the enactment of the present C.P.L.R., Article 78, and its predecessor C.P.A., Article 78, both of which greatly expanded the scope of review. In addition they were decided before the passage of Art. 5, Sec. 9, N.Y. State Constitution in 1894 which provided for a civil service in both the state and municipal governments. The result of this amendment was the assimilation of police organization into the civil service.

A review of judicial decisions affecting the military and police will further establish the special and unique position the military has in our jurisprudence. In *United States ex rel. French* v. *Weeks,* 259 U.S. 326, 42 S. Ct. 505, 66 L. Ed. 965 (1921) and *United States ex rel. Creary* v. *Weeks,* 259 U.S. 336, 42 S. Ct. 509, 66 L. Ed. 973 (1921), a mandamus petition was brought by the petitioners to have them reinstated as officers in the Army after they were administratively retired. In both cases, the court held that it did not have jurisdiction and dismissed the petitions.

In *Radlanszky* v. *Police Commissioner,* 3 A.D. 2d 742, 160 N.Y.S. 2d 555 (1957), the Court annulled the dismissal of the petitioner policeman and restored him to his position, and in *Malara* v. *Monaghan,* 131 N.Y.S. 2d 270 (1954), a probationary patrolman was removed from his position improperly and when the police commissioner refused to reinstate him the court ordered reinstatement.

In *Covington* v. *Anderson,* 487 F 2d 660 (9th Cir., 1973), the petitioner brought an action for declaratory and injunctive relief due to his suspension from flight status with the Oregon National Guard which was motivated by economic necessity. The action was dismissed and affirmed on appeal, the court stating that it did not have jurisdiction to review such an administrative determination. By contrast, the New York courts have not only reviewed but under proper circumstances have reversed a police commissioner's assignment of men. In both *Sheridan* v. *Kennedy,* 19 Misc. 2d 765, 194 N.Y.S. 2d 115, affd. 10 A.D. 2d 606, 197 N.Y.S. 2d 412, affd. 8 N.Y. 2d 794, 201 N.Y.S. 2d 805 (1960) and *Clifford* v. *Police Com'r. of City of New York,* 152 N.Y.S. 2d 923, mod. in other respects 2 A.D. 2d 674, 154 N.Y.S. 2d 115, Mot. for order of reversal as moot. den. 6 N.Y.2d 811, 188 N.Y.S. 2d 198 (1959), the court enjoined the commissioner from assigning policemen to out of grade jobs.

Also, in the area of discipline, the courts will not interfere with a military determination on the grounds that it lacks jurisdiction to do so. *Arnheiter* v. *Chafee,* 435 F.2d 691 (9th Cir., 1971). However, the New York courts have jurisdiction to review police disciplinary matters *Walker* v. *Murphy, supra,* and in appropriate cases will either re-

verse a determination *Radlanszky* v. *Police Commissioner, supra,* or modify the punishment imposed *Truckenbrodt* v. *Smith,* 19 A.D.2d 907, 244 N.Y.S.2d 1013 (1963).

The courts in refusing to interfere in military affairs generally and to review grooming regulations in particular have pointed to the fact that the discipline required in a military organization must be determined by the military and not the courts. *Anderson* v. *Laird,* 437 F.2d 912 (7th Cir., 1971); *Raderman* v. *Kaine,* 411 F. 2d 1102 (2nd Cir., 1969). The same justification was used by the court in *Stradley* v. *Andersen,* 478 F.2d 188 (8th Cir., 1973).

The need for discipline in the military, however, is substantially different from that needed by the police. As far back as the Indian wars in this country it was established that to have a competent and successful military, it was necessary to impose a strong and vigorous discipline upon a soldier[12] in order to insure that he obeys "orders from force of habit on occasions when his natural instinct would impel him to think only of his personal safety, advantage, or honour".[13] To impose the same type of discipline upon police would be counterproductive to the principle that a policeman should be taught to act individually, on his own initiative and under self-control.[14]

In *Parker* v. *Levy,* 417 U.S. 484, 94 S. Ct. 2547, 2556 (1974) this Court recently reemphasized the need for a strict military discipline:

> "'An army is not a deliberative body. It is an executive arm. Its law is that of obedience. No question can be left open as to the right to command in the officer, or the duty of obedience in the soldier'."

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[12] Weigley, *supra* at 23.

[13] W. Lee, *supra* at 402.

[14] *Ibid.*

The court further observed that military society was a society separate and apart from the civilian society and as such is ". . . governed by a separate discipline from that of the civilian, . . ." *Ibid.* In order to govern this distinct society the Court stated:

> "Just as military society has been a society apart from civilian society, so '[m]ilitary law . . . is a jurisprudence which exists separate and apart from the law which governs in our federal judicial establishment.'" *Ibid.*

The police are not separate from the people,[15] but are public servants, serving the entire community.[16] They are also members of the civil service, see, Suffolk County Charter, Art. 12, Sec. 1203; N.Y. Civil Service Law, Sec. 58, and entitled to all of the rights and benefits which said law bestowed on its members.

In addition the members of the Department fall within the definition of public employees as is set forth in Art. 14 of the N.Y. Civil Service Law (commonly referred to as the Taylor Law) and are entitled to and have negotiated collective bargaining agreements through the respondent association, see, *Johnson* v. *Klein,* 75 Misc. 2d 352, 347 N.Y.S. 2d 978, and are presently covered by such an agreement which governs the terms and conditions of their employment. See, Sec. 203, Taylor Law. The benefits of the Taylor Law are not available to members of the New York State Militia, since they are specifically excluded by Sec. 201 sub. 7 (a).

The effect of both the general Civil Service Law and the Taylor Law is that the Police Commissioner no longer has wide discretion in the hiring, firing or assigning of police

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[15] National Advisory Commission on Criminal Justice Standards and Goals, Report on Police, 9, 30 (1973).

[16] W. Lee, *supra* at 328.

officers but is limited as are all other heads of municipalities to comply not only with the law but also the collective bargaining agreement in effect. These limitations placed upon the petitioner and the corresponding rights granted the respondent certainly do not equate with the historically inaccurate and anachronistic classification of police officers being members of a para-military organization.

Police officers are civil servants with the same rights as all other civil servants, and the mere fact that they may have a job which is more hazardous than that of other civil servants is an insufficient reason to classify them as being para-military.

II

The doctrine of comity is not present in this case.

Although the petitioner raises the question of whether the lower courts, in view of the *Greenwald* v. *Frank* decision, should have refrained from deciding the present case based upon this court's decisions in *Younger* v. *Harris*, 401 U.S. 37, 91 S. Ct. 746, 27 L. Ed. 2d 669 (1971); *Hoffman* v. *Pursue, Ltd.*, —— U.S. ——, 95 S. Ct. 1200, 43 L. Ed. 2d 482 (1975), the basis for such restraint is not present. The police departments of Nassau and Suffolk counties are separate and distinct, being organized, operated and controlled by the respective local governments. Each department is independent of the other and the priorities of one may not be the same as the other. The identity of issues and parties which would be a prerequisite for invoking the doctrine of comity is totally absent.

In addition, it should be pointed out that the initial decision in this case rendered in November, 1971, preceded the initial decision in *Greenwald* v. *Frank* (June, 1972) by more than seven months and at the time the present action was commenced there was no pending action either in the courts or on the administrative level.

The case of *McCune* v. *Frank* (2nd Cir. decided 7/16/75 docket # 75-7027), does not strengthen the petitioner's argument, since it involves one of a series of cases instituted by members of the Nassau County Police Department subsequent to *Greenwald* v. *Frank*, in an attempt to gain the same relief the respondent herein had obtained.

III

The petitioner did not sustain his burden of justifying a grooming regulation which impinges upon the constitutional rights of the defendant.

The court of appeals in its original decision properly concluded that "there is a substantial constitutional issue raised by regulation of the plaintiff's hair length" (Pet. App. 16a) and in holding that the "choice of personal appearance is an ingredient of an individual's personal liberty, and that any restriction on that right must be justified by a legitimate state interest reasonably related to the regulations" (Pet. App. 17a).

This decision is in accord not only with a substantial majority of the numerous (a minimum of 30) cases deciding the issue but also with the First, Third, Fourth, Seventh, and Eighth Circuits.[17] See, *Miller* v. *Ackerman*, 488 F.2d 920, 922 (8th Cir., 1973). The unifying thought which appears to run through these circuit decisions is that "Personal liberty . . . includes the freedom to make and act on less significant personal decisions without arbitrary governmental interference" (Pet. App. 17a).

This rationale is not only in accord with Mr. Justice Harlan's dissenting opinion in *Poe* v. *Ullman*, 367 U.S.

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[17] *Richards* v. *Thurston*, 424 F.2d 1281 (1st Cir., 1970); *Stull* v. *School Board of Western Beaver Junior-Senior High School*, 459 F.2d 339 (3rd Cir., 1972); *Massie* v. *Henry*, 455 F.2d 779 (4th Cir., 1972); *Breen* v. *Kahl*, 419 F.2d 1034 (7th Cir., 1969), cert. denied, 398 U.S. 937, 90 S.Ct. 1836, 26 L.Ed.2d 268; *Bishop* v. *Colaw*, 450 F. 2d 1069 (8th Cir., 1971).

497, 543, but the recent decision of this Court in *Cleveland Board of Education* v. *La Fleur,* 414 U.S. 639, 94 S.Ct. 791, 796 (1974), which struck down a school district's maternity leave policy as being an arbitrary interference in the "freedom of personal choice in matters of marriage and family life [which] is one of the liberties protected by the Due Process Clause of the Fourteenth Amendment.".

Although the petitioner questions whether the right of an individual to adopt a personal grooming standard is protected by the constitution, he reserves the main thrust of his argument to the burden of "establishing a genuine public need" (Pet. App. 18a) which the circuit court imposed upon him. This burden is no greater than that imposed upon the school board to justify its maternity leave policy in *Cleveland Board of Education* v. *La Fleur, supra,* at 94 S. Ct. 796.

At the rehearing, the petitioner advanced two arguments to justify the regulation: (1) safety; (2) a uniform appearance promotes morale (Pet. App. 6a). Both issues were considered by the trial court. On the issue of safety the court observed that "The potential danger in hairdress is the ability of the offender to grip the hair and hold the fate of the police officer in his hand. Bulk and length of hair is not regulated. . . . Thus the regulation would permit bulky and lengthy hair on the top of the head, thereby presenting the very problem that was demonstrated." (Pet. App. 7a). The court then found that "No proof was offered to support any claim of the need for the protection of the police officer in the pertinent regulations." (Pet. App. 7a).

As to the issue of uniform appearance and morale the court found ". . . the standards do nothing more than demand uniformity. Uniformity for uniformity's sake does not establish a public need." (Pet. App. 7a-8a). The Court then concluded the "Defendant failed to establish a legitimate state interest . . ." (Pet. App. 8a). These

findings were clearly supported by the evidence and should not be set aside. See, *United States* v. *Oregon State Medical Soc.,* 343 U.S. 326, 332, 72 S. Ct. 690, 96 L. Ed. 978.

The petitioner points to the recent case of *Kamerling, et al.* v. *O'Hagan,* 512 F2d 443 (2d Cir., 1975), in support of his claim that safety is a valid state interest sufficient to sustain the regulation. The attorneys for the respondent in this case also represented the plaintiff in the *Kamerling* case and would point out that the state (N.Y. City Fire Commissioner) introduced sufficient evidence to establish "a genuine public need for the regulation" (Pet. App. 18a).

The respondent does not contend that petitioner can under no circumstances pass a regulation which may infringe upon respondent's personal liberties. It is, however, the respondent's position that the petitioner's burden of justifying such a regulation is no less than that imposed upon any other municipal official.

CONCLUSION

For the reasons set forth above the judgment of the Circuit Court should be affirmed.

Dated: Smithtown, New York, August 15, 1975.

Respectfully submitted,

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MOTION FILED
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IN THE

Supreme Court of the United States

OCTOBER TERM, 1975

No. 74-1269

JOHN L. BARRY, Commissioner of the Suffolk County Police Department,
Petitioner,

v.

THOMAS DWEN, as President of the Suffolk County Patrolmen's Benevolent Association, and Thomas Dwen, Individually,
Respondent.

On Writ of Certiorari to the United States Court of Appeals for the Second Circuit

MOTION FOR LEAVE TO FILE BRIEF AND BRIEF FOR THE INTERNATIONAL BROTHERHOOD OF POLICE OFFICERS AS AMICUS CURIAE

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MISCELLANEOUS:

Cooley, 18 Amer. Law. Reg. 685 commenting on *Ho Ah Kow* v. *Nunan*, 12 Fed. Cas. 252, No. 6,546 (C.C. D. Cal. 1879)	8

IN THE

Supreme Court of the United States

OCTOBER TERM, 1975

No. 74-1269

JOHN L. BARRY, Commissioner of the Suffolk County Police Department,
Petitioner,

v.

THOMAS DWEN, as President of the Suffolk County Patrolmen's Benevolent Association, and Thomas Dwen, Individually,
Respondent.

On Writ of Certiorari to the United States Court of Appeals for the Second Circuit

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MOTION FOR LEAVE TO FILE BRIEF AS AMICUS CURIAE

Pursuant to Rule 42(2) of the Court's Rules, the International Brotherhood of Police Officers moves for leave to file the attached brief as *amicus curiae*, in support of the respondent's position. Counsel for peti-

tioner has consented to the filing of this brief, but counsel for respondent has not.

INTEREST OF THE AMICUS

The International Brotherhood of Police Officers ("IBPO") is the largest independent international union in the United States concentrating on representation of uniformed police officers, with a membership exceeding 25,000. IBPO is the bargaining representative for officers in the District of Columbia and in other police departments on the east and west coasts and in the midwest.

IBPO's members believe that their public responsibilities are compatible with a retention of the personal liberties enjoyed by the general population, and that neither their individual rights nor the public interest are served by militaristic regimentation of the private lives of police officers. Since hair, unlike clothing, cannot be changed, unduly restrictive grooming regulations impinge upon an officer's freedom to determine his own appearance in off-duty as well as duty hours. Moreover, a police officer's dealings with community members while on duty are impaired rather than enhanced by an unusually conservative appearance. IBPO's members therefore strongly object to regulations, such as those at issue in this case, which are calculated to segregate them from the mainstream of contemporary society.

Because the hair-regulation problem is important both in itself and as an exemplar of the police officer's role and status in society, IBPO has itself instituted several administrative and judicial proceedings challenging regulations such as those at issue here. Those

proceedings will obviously be affected by the outcome of this case. We seek leave to file the attached brief to demonstrate the nationwide concern with the issue presented in this case and to assist the Court in its consideration of the issue with arguments that may not be presented by respondent.

Respectfully submitted,

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August 1975.

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JOHN L. BARRY, Commissioner of the Suffolk County Police Department,
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BRIEF FOR THE INTERNATIONAL BROTHERHOOD OF POLICE OFFICERS AS AMICUS CURIAE

This brief is submitted by the International Brotherhood of Police Officers, contingent upon the granting of the foregoing Motion for Leave to File Brief as

Amicus Curiae. *Amicus* supports the position of respondent and urges the Court to affirm the judgment of the court of appeals. The interest of *amicus* is stated in the foregoing Motion.

In our view, the question presented may more appropriately be stated as follows:

Whether the two courts below properly found certain hair-grooming restrictions upon police officers unconstitutional because of the absence of a "genuine public need" for such restrictions.

ARGUMENT

We submit that the court of appeals' first opinion (Pet. App. 9a-18a) correctly held (1) "that choice of personal appearance is an ingredient of an individual's personal liberty [protected by the Fourteenth Amendment], and that any restriction on that right must be justified by a legitimate state interest reasonably related to the regulation" (Pet. App. 17a), (2) that police officers may not be relegated to a "para-military" status that would deny them that liberty (Pet. App. 12a-15a), and (3) that petitioner had not met his burden of demonstrating a "genuine public need" (Pet. App. 18a) for specific restrictions on long hair, sideburns and beards, which "do not provide standards for proper grooming [but] [r]ather * * * do nothing more than demand uniformity" (Pet. App. 7a); claims that the regulations are required for safety, identifiability and esprit de corps are unsubstantiated, making the regulations "an arbitrary limitation and a purposeless restraint" (Pet. App. 8a).

In this brief, we do not seek to answer all of petitioner's arguments (some of which need no answer)

nor to argue respondent's case expansively. We limit ourselves to several major points.

I. Fourteenth Amendment "Liberty" Encompasses the Right of an Individual to Regulate His Personal Appearance

> "Although the Court has not assumed to define 'liberty' with any great precision, that term is not confined to mere freedom from bodily restraint. Liberty under law extends to the full range of conduct which the individual is free to pursue, and it cannot be restricted except for a proper governmental objective." *Bolling* v. *Sharpe,* 347 U.S. 497, 499-500.

Mr. Justice Harlan elaborated upon the concept in his separate opinion in *Poe* v. *Ullman,* 367 U.S. 497, 543 (dissenting from dismissal of the appeal):

> "[T]he full scope of the liberty guaranteed by the Due Process Clause cannot be found in or limited by the precise terms of the specific guarantees elsewhere provided in the Constitution. This 'liberty' is not a series of isolated points pricked out in terms of the taking of property; the freedom of speech, press and religion; the right to keep and bear arms; the freedom from unreasonable searches and seizures; and so on. It is a rational continuum which, broadly speaking, includes a freedom from all substantial arbitrary impositions and purposeless restraints * * * and which also recognizes, what a reasonable and sensitive judgment must, that certain interests require particularly careful scrutiny of the state needs asserted to justify their abridgment." (Citations omitted.)

As that same opinion observed, the error of the now discredited "substantive due process" decisions of the past was not in their basic concept but in the stand-

ards applied in determining whether the right had been infringed in the economic sphere (367 U.S. at 517-518). Thus, Mr. Justice Holmes' dissent in *Lochner* v. *New York,* 198 U.S. 45, 76, properly left room for the situation where "a rational and fair man necessarily would admit that the statute proposed would infringe fundamental principles as they have been understood by the traditions of our people and our law."

The concept of "liberty" has been broadly defined to encompass "freedom of personal choice in matters of marriage and family life" in all their ramifications (see, *Cleveland Board of Educ.* v. *LaFleur,* 414 U.S. 639-640), as well as the "right to travel" (*Kent* v. *Dulles,* 357 U.S. 116, 126); see also, *e.g., Union Pac. Ry.* v. *Botsford,* 141 U.S. 250, 251; *Stanley* v. *Georgia,* 394 U.S. 557, 564. The generality of the concept is further evidenced by the Court's characterization of the right recognized in *Kent* as one "as close to the heart of the individual as the choice of what he eats, *or wears,* or reads" (357 U.S. at 126, emphasis added). And almost a hundred years ago, Judge Cooley commented as follows on Mr. Justice Field's opinion (on circuit) in what was doubtless the first of the "hair" cases:

> "No better illustration of one's rightful liberty in this regard can be given than the fashion of wearing the hair. If the wearing of a [Chinaman's] queue can be made unlawful, so must be the wearing of curls by a lady or mustache by a beau, and the state may at its discretion fix a standard for hair dressing to which all shall conform. The conclusive answer to any such legislation is that it meddles in that which is no concern of the state and therefore invades the private right." Cooley, 18 Amer. Law Reg. 685, commenting on *Ho Ah Kow* v. *Nunan,* 12 Fed. Cas. 252, No. 6,546 (C.C.D. Cal. 1879).

In recent years, there have been numerous lower court decisions relating to hair-grooming regulations, mostly in public schools and colleges; nine of the courts of appeals have found a constitutional protection, with only two courts (in decisions dating from 1970 and 1971) denying it.[1] Judge Coffin's opinion in *Richards* v. *Thurston,* 424 F.2d 1281 (1 Cir. 1970), is perhaps the best articulated:

> "[L]iberty seems to us an incomplete protection if it encompasses only the right to do momentous acts, leaving the state free to interfere with those personal aspects of our lives which have no direct bearing on the ability of others to enjoy their liberty. * * * Indeed, a narrower view of liberty in a free society might, among other things, allow the state to require a conventional coiffure of all its citizens, a governmental power not unknown in European history.
>
> "We think the founding fathers understood themselves to be limiting the government's power to intrude into this sphere of personal liberty by reserving some powers to the people. * * * The founding fathers wrote an amendment for speech and assembly; even they would not deem it necessary to write an amendment for personal appearance. We conclude that within the commodious

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[1] Cases recognizing the right: *Richards* v. *Thurston,* 424 F.2d 1281, 1284 (1 Cir. 1970); *Dwen* v. *Barry,* 483 F.2d 1126 (2 Cir. 1973); *Stull* v. *School Board,* 450 F.2d 339, 347 (3 Cir. 1972); *Massie* v. *Henry,* 455 F.2d 779, 783 (4 Cir. 1972); *Lansdale* v. *Tyler Jr. College,* 470 F.2d 659, 662 (5 Cir. 1972), *cert. denied,* 411 U.S. 986; *Breen* v. *Kahl,* 419 F.2d 1034, 1036 (7 Cir. 1969), *cert. denied,* 398 U.S. 937; *Bishop* v. *Colaw,* 450 F.2d 1069, 1075 (8 Cir. 1971); *Freeman* v. *Flake,* 448 F.2d 258, 261 (10 Cir. 1971); *Brown* v. *D.C. Transit,* No. 73-2089 (D.C. Cir. 1975). Cases not recognizing the right: *Jackson* v. *Dorrier,* 424 F.2d 213, 216 (6 Cir. 1970), *cert. denied,* 400 U.S. 850; *King* v. *Saddleback Jr. College District,* 445 F.2d 932, 940 (9 Cir. 1971).

concept of liberty, embracing freedoms great and small, is the right to wear one's hair as he wishes." 424 F.2d at 1284-1285 (footnotes omitted).[2]

II. The Shape and Length of Police Officers' Hair Can Be Regulated Only to the Extent Justified by Valid Public Needs

This Court has recently held in *Cleveland Board of Educ.* v. *LaFleur, supra,* that public employee regulations "must not needlessly, arbitrarily, or capriciously impinge upon" Fourteenth Amendment liberties (414 U.S. at 640) and must have a "rational relationship to [a] valid state interest" (*id.* 643). The *LaFleur* standard is essentially the same as the "genuine public need" standard established for this case in the court of appeals' 1973 opinion (Pet. App. 18a) and applied in the subsequent decisions below. See also, *Richards* v. *Thurston, supra,* 424 F.2d at 1285.

The court of appeals has amply answered petitioner's question-begging argument that police officers have a "para-military" status that somehow automatically deprives them of their Fourteenth Amendment right. See Pet. App. 12a-15a. The civilian tradition of law enforcement under our governmental system distinguishes police officers from members of the armed forces, who belong to "a specialized community governed by a separate discipline from that of the civilian," where "the rights of men * * * must perforce be conditioned to meet certain overriding demands of discipline and duty * * *," and where "there is simply not the same autonomy as there is in the larger civilian community." *Parker* v. *Levy,* 417 U.S. 733, 743-744,

[2] See also, *Board of Selectmen of Framingham* v. *Civil Service Comm.,* — Mass. —, 321 N.E.2d 649, 655 (1974).

751. See *Bence* v. *Breier,* 501 F.2d 1185, 1191-1192 (7 Cir. 1974), *cert. denied,* 419 U.S. 1121. Police work properly emphasizes not blind obedience but individual judgment—a quality that is incompatible with the militaristic regimentation for which petitioner argues. Thus, whatever restrictions may appropriately be placed upon members of the military, it remains true in this respect as in others that "policemen, like teachers and lawyers, are not relegated to a watered down version of constitutional rights." *Garrity* v. *New Jersey,* 385 U.S. 493, 500.[3]

In considering whether there is a sufficiently weighty "public need" to justify such regulations as are here in question, it is of significance that hair restrictions—unlike uniform regulatons and standards of cleanliness—regiment an officer's off-duty hours as well as his duty hours. Obviously, hair length cannot be changed at the end of a tour of duty as clothing can. This factor has appropriately been given weight in the analogous situation presented by school grooming codes and restrictions upon military reservists. *E.g., Richards* v. *Thurston, supra,* 424 F.2d at 1285; *Stull* v.

[3] Mr. Justice Holmes' early epigram that a police officer "may have a constitutional right to talk politics, but he has no constitutional right to be a policeman," *McAuliffe* v. *Mayor & Aldermen of New Bedford,* 155 Mass. 216, 220 (1894), has surely lost any validity it might have had as a basis for denying general constitutional rights to public employees without specific job-related justifications. That same court has recently so held in *Broderick* v. *Police Commissioner* Mass. Sup. Jud. Ct., June 4, 1975. This Court has implicitly rejected any such principle not only in *Garrity* and *LeFleur,* but also in such other decisions as *Keyishian* v. *Regents,* 385 U.S. 589, 605 and *Graham* v. *Richardson,* 403 U.S. 365, 374. See also *Perry* v. *Sinderman,* 408 U.S. 593; *Arnett* v. *Kennedy,* 416 U.S. 134, 167 (Powell and Blackmun, J.J., concurring in part), 179 (White, J., concurring in part).

School Board, 459 F.2d 339, 345 (3 Cir. 1972); *Breen* v. *Kahl,* 419 F.2d 1034, 1038 (7 Cir. 1969); *Friedman* v. *Froehlke,* 470 F.2d 1351 (1 Cir. 1972); *Garmon* v. *Warner,* 358 F.Supp. 206, 211 (W.D.N.C. 1973); *Harris* v. *Kaine,* 352 F.Supp. 769, 773 n.6 (S.D.N.Y. 1972).

III. Petitioner's Attempted Justifications for These Hair Regulations Do Not Rise to the Level of Valid Public Needs

Petitioner advances three purported justifications for the intrustion on personal liberties the hair regulation works.[4] He contends, first, that uniformity of ap-

[4] As amended in 1973, the regulation provides as follows (see Pet. App. 6a, App. E-50):

Grooming Standards 2.16 Members of the Force will be neat and clean at all times while on duty. Male personnel will comply with the following grooming standards unless excluded by the Police Commissioner due to special assignments:

Hair A. Hair will be neat, clean, trimmed, and present a groomed appearance. Hair will not touch the collar except the closely cut hair on the back of the neck. Hair in front will be groomed so that it does not fall below the band of properly worn headgear. In no case will the bulk or length of the hair interfere with the proper wear of any authorized headgear.

Sideburns B. If a member chooses to wear sideburns, they will be neatly trimmed and tapered. Sideburns will not extend below the lowest part of the exterior ear opening, will be of even width (not flared), and will end with a clean-shaven horizontal line.

Mustaches C. A short and neatly trimmed mustache may be worn, but will not extend over the top of the upper lip or beyond the corners of the mouth.

Beards D. The face will be clean-shaven other than the wear of the acceptable mustache or sideburns. Beards and goatees are prohibited, except where a Police Surgeon grants a waiver for the wearing of a beard for medical reasons with the approval of the Police Commissioner. When a Surgeon prescribes that a member not shave, the beard will be kept trimmed symmetrically and all beard hairs will be kept trimmed so that they do not protrude more than one-half inch from the skin surface of the face.

Wigs E. Wigs or hair pieces will not be worn while on duty in uniform except for cosmetic reasons to cover natural baldness or physical disfiguration. If under these conditions, a wig or hair piece is worn, it will conform to department standards.

pearance is necessary to the effective performance of the police function because it enhances force morale (Pet. Br. 21-22); second, that the regulations make police officers more readily identifiable by the public (Pet. Br. 17-18, 21); and third, that short hair, short sideburns, short mustaches and no beards are required for safe performance of police officers' duties (Pet. Br. 23-24). Even if these justifications had been so clearly articulated at trial, they do not amount to public *needs* sufficient to warrant intrusion upon police officers' Fourteenth Amendment liberties.

1. As petitioner's only trial witness conceded, there exists no study or survey which shows any impact of uniform appearance on the morale or effectiveness of the force (App. 17). The unsupported opinions of "experts" cannot dispel the greater likelihood that the opposite is the case—that a force secure in its rights and at home in its community would be more effective. Uniformity for uniformity's sake alone is not a public need.

2. There is no evidence that short hair makes policemen significantly more identifiable in a society where ordinary citizens wear their hair in all lengths

and styles, both long and short. Plainly, the uniform, badge and hat (which *can* be donned for duty and then removed) are the primary means of identification and suffice for that purpose. See *Greenwald* v. *Frank*, 40 A.D.2d 717, 337 N.Y.S.2d 225 (1972) (Shapiro, J., dissenting).[5]

3. The "safety" arguments are equally implausible justifications for a regulation precluding any hair below the collar and all sideburns and beards, however short. The two arguments are (1) that an officer can be thrown off balance while making an arrest if his hair is pulled, and (2) that long hair can be blown into an officer's eyes during a pursuit chase in his squad car. The only proof of the first point consisted of a demonstration in which a court reporter with long hair was pulled to the ground by a policeman pulling his hair. But as the record discloses (App. 16), the hair that was pulled was above the collar and thus would not have violated the regulation. The second point was supported by no evidence whatever, and it is difficult to understand how such a hazard could be created by, for example, hair one inch below the collar, a beard or sideburns, or even a ponytail. Even truly long hair could readily be controlled by a wig or inconspicuous hairnet.

We do not argue that hair styles of police officers need be left entirely to the whim of the individual. General standards of neatness and compatibility with community practices would, no doubt, pass constitu-

[5] The public appearance justification is attenuated by the regulation's prohibition on the wearing of wigs (App. E-50). As with the other elements of the regulatory scheme, no proof whatsoever was offered to show that wigs would not accomplish the "uniform appearance" objective. The anti-wig provision makes it impossible for the officer desiring to wear long hair off duty to comply with the short-hair requirement while on duty.

tional muster if fairly applied by those charged with their enforcement. Officers can reasonably be required to have clean and neat hair *while on duty*, just as they can be required to wear a uniform that is clean and neatly pressed. The vice of petitioner's regulations is that they go beyond what is rationally related to law enforcement needs and "needlessly, arbitrarily or capriciously" impose petitioner's predilections for uniformity and a "conservative" appearance.[6]

CONCLUSION

For these reasons, as well as those stated in respondent's brief and in the opinions below, the judgment of the court of appeals should be affirmed.

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[6] Absent a safety reason (which has not been seriously shown), one can properly view with a suspicious eye an edict that condemns the personal appearance of at least one member of this Court, the Solicitor General and numerous members of Congress.